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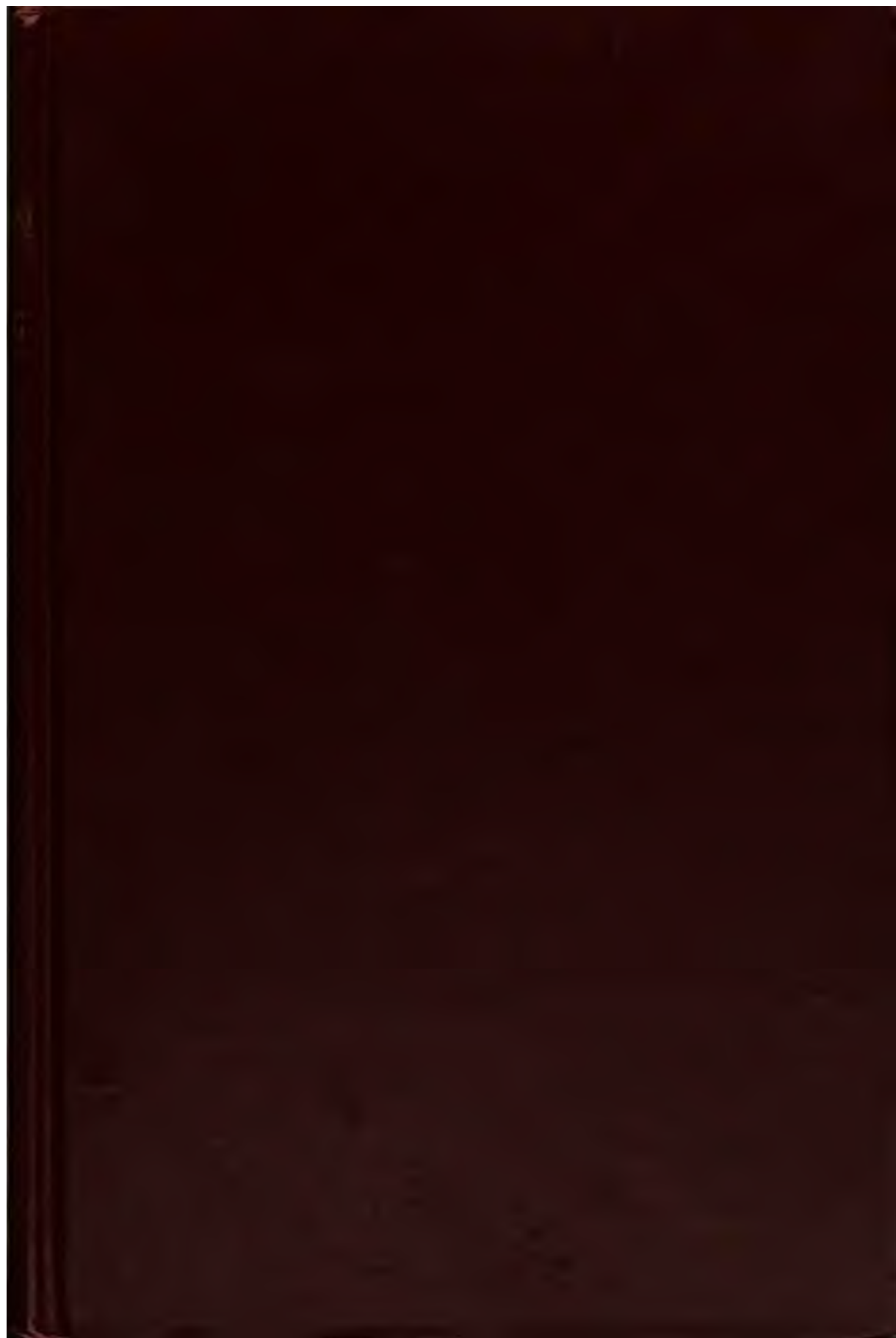
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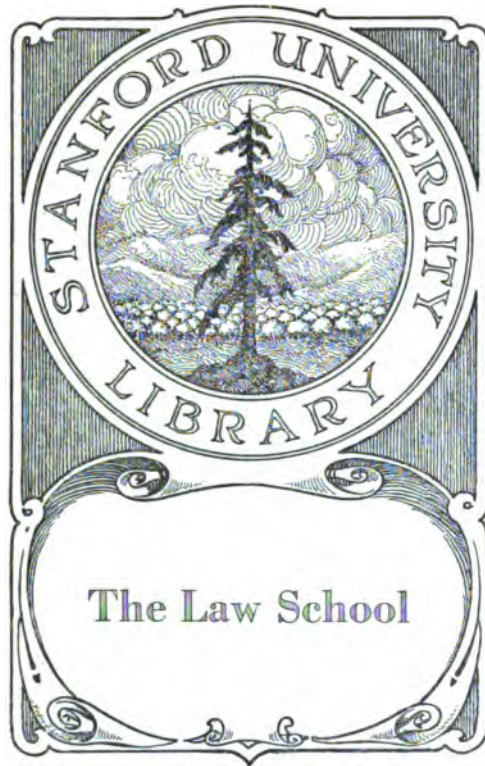
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**CRIME  
AND ITS REPRESSION**

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THE MODERN CRIMINAL SCIENCE SERIES  
*Published under the Auspices of*  
THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY

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# Crime And Its Repression

BY GUSTAV ASCHAEFFENBURG  
*Professor of Psychiatry in the Cologne Academy of Practical Medicine  
and Editor of the "Journal of Criminal Psychology and  
Criminal Law Reform"*

Translated by  
ADALBERT ALBRECHT  
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WITH AN EDITORIAL PREFACE BY  
MAURICE PARMELEE  
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AND AN INTRODUCTION BY  
ARTHUR C. TRAIN  
*Former Assistant District Attorney for New York County*

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1918



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## GENERAL INTRODUCTION TO THE MODERN CRIMINAL SCIENCE SERIES.

At the National Conference of Criminal Law and Criminology, held in Chicago, at Northwestern University, in June, 1909, the American Institute of Criminal Law and Criminology was organized; and, as a part of its work, the following resolution was passed:

*"Whereas*, it is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language, *Resolved*, that the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The Committee appointed under this Resolution has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors, and with translators, for the immediate undertaking and rapid progress of the task. It realizes the necessity of educating the professions and the public by the wide diffusion of information on this subject. It desires here to explain the considerations which have moved it in seeking to select the treatises best adapted to the purpose.

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.

Two centuries ago, while modern medical science was still young, medical practitioners proceeded upon two general assumptions: one as to the cause of disease, the other as to its treatment. As to the cause of disease, — disease was sent by the inscrutable will of God. No man could fathom that will, nor its arbitrary operation. As to the treatment of disease, there were believed to be a few remedial agents of universal efficacy. Calomel and blood-letting, for example, were two of the principal ones. A larger or smaller dose of calomel, a greater or less quantity of bloodletting, — this blindly indiscriminate mode of treatment was regarded as orthodox for all common varieties of ailment. And so his calomel pill and his bloodletting lancet were carried everywhere with him by the doctor.

Nowadays, all this is past, in medical science. As to the causes of disease, we know that they are facts of nature, — various, but distinguishable by diagnosis and research, and more or less capable of prevention or control or counteraction. As to the treatment, we now know that there are various specific modes of treatment for specific causes or symptoms, and that the treatment must be adapted to the cause. In short, the individualization of disease, in cause and in treatment, is the dominant truth of modern medical science.

The same truth is now known about crime; but the understanding and the application of it are just opening upon us. The old and still dominant thought is, as to cause, that a crime is caused by the inscrutable moral free will of the human being, doing or not doing the crime, just as it pleases; absolutely free in advance, at any moment of time, to choose or not to choose the criminal act, and therefore in itself the sole and ultimate cause of crime. As to treatment, there still are just two traditional measures, used in varying doses for all kinds of crime and all kinds of persons, — jail, or a fine (for death is now employed in rare cases only). But modern science, here as in medicine, recognizes that crime

also (like disease) has natural causes. It need not be asserted for one moment that crime is a disease. But it does have natural causes, — that is, circumstances which work to produce it in a given case. And as to treatment, modern science recognizes that penal or remedial treatment cannot possibly be indiscriminate and machine-like, but must be adapted to the causes, and to the man as affected by those causes. Common sense and logic alike require, inevitably, that the moment we predicate a specific cause for an undesirable effect, the remedial treatment must be specifically adapted to that cause.

Thus the great truth of the present and the future, for criminal science, is the individualization of penal treatment, — for that man, and for the cause of that man's crime.

Now this truth opens up a vast field for re-examination. It means that we must study all the possible data that can be causes of crime, — the man's heredity, the man's physical and moral make-up, his emotional temperament, the surroundings of his youth, his present home, and other conditions, — all the influencing circumstances. And it means that the effect of different methods of treatment, old or new, for different kinds of men and of causes, must be studied, experimented, and compared. Only in this way can accurate knowledge be reached, and new efficient measures be adopted.

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working, — anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general and the legal profession in particular have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And this ignorance or indifference has blocked the way to progress in administration.

The Institute therefore takes upon itself, as one of its aims, to inculcate the study of modern criminal science, as a pressing duty for the legal profession and for the thoughtful community at large. One of its principal modes of stimulating and aiding this study is to make available in the English language the most useful treatises now extant in the Continental languages. Our country has started late. There is much to catch up with, in the results reached elsewhere. We shall, to be sure, profit by the long period of argument and theorizing and experimentation which European thinkers and workers have passed through. But to reap that profit, the results of their experience must be made accessible in the English language.

The effort, in selecting this series of translations, has been to choose those works which best represent the various schools of thought in criminal science, the general results reached, the points of contact or of controversy, and the contrasts of method — having always in view that class of works which have a more than local value and could best be serviceable to criminal science in our country. As the science has various aspects and emphases — the anthropological, psychological, sociological, legal, statistical, economic, pathological — due regard was paid, in the selection, to a representation of all these aspects. And as the several Continental countries have contributed in different ways to these various aspects, — France, Germany, Italy, most abundantly, but the others each its share, — the effort was made also to recognize the different contributions as far as feasible.

The selection made by the Committee, then, represents its judgment of the works that are most useful and most instructive for the purpose of translation. It is its conviction that this Series, when completed, will furnish the American student of criminal science a systematic and sufficient acquaintance with the controlling doctrines and methods that now hold the stage of thought in Continental Europe.

Which of the various principles and methods will prove best adapted to help our problems can only be told after our students and workers have tested them in our own experience. But it is certain that we must first acquaint ourselves with these results of a generation of European thought.

In closing, the Committee thinks it desirable to refer the members of the Institute, for purposes of further investigation of the literature, to the "Preliminary Bibliography of Modern Criminal Law and Criminology" (Bulletin No. 1 of the Gary Library of Law of Northwestern University), already issued to members of the Conference. The Committee believes that some of the Anglo-American works listed therein will be found useful.

#### COMMITTEE ON TRANSLATIONS.

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## EDITORIAL PREFACE TO THIS VOLUME

By MAURICE PARMELEE<sup>1</sup>

THE author of this work, GUSTAV ASCHAFFENBURG, stands in the front rank of leaders of thought in modern criminal science in Germany. His work bears witness to the valuable aid which medical and psychiatric studies must always render to criminal law. In its thoroughly realistic application of social statistics to the theories of criminal law, it occupies a place of almost unique importance in the literature of criminal science. Finally, it presents an original treatment of the entire subject — the Repression of Crime — which may well serve some day as a model for a work based on American statistics, — if reliable ones shall ever become available.

DR. ASCHAFFENBURG was born May 23, 1866, at Zweibrücken, in the Palatinate. Between 1885 and 1890 he pursued his studies at the Universities of Heidelberg, Würzburg, Freiburg, Berlin, and Strassburg; taking his degree in medicine at Strassburg in 1890, with a thesis on "The Symptomatology of Delirium Tremens." Studying afterwards in Vienna (with Meinert and Krafft-Ebing) and in Paris, he then became Assistant in Professor Kraepelin's psychiatric clinic at Heidelberg. (To American students the names of Kraepelin and Krafft-Ebing are well known as among the

<sup>1</sup> Associate Professor of Sociology in the University of Missouri; author of "Principles of Anthropology and Sociology in their Relations to Criminal Procedure," etc.



most famous psychiatrists of Europe.) At Heidelberg he became successively Lecturer (1895) and Assistant-Professor (1900).

In 1901 he went to Halle (an der Saale) as Medical Director of the Department for Insane Criminals. Since 1904 he has been at Cologne, as Professor of Psychiatry in the Academy of Practical Medicine and Medical Director of the Psychiatric Clinic.

DR. ASCHAFFENBURG'S numerous published works cover varied aspects of crime and mental disease.<sup>1</sup> In 1905 he founded the *Monthly Journal of Criminal Psychology and Criminal Law Reform*, of which he has since been editor-in-chief; his associate editors are von Liszt, professor of criminal law in Berlin, von Lilienthal, professor of criminal law in Heidelberg, and Kloss, judiciary counsellor in Hamm. In 1912 he began (with Professor Kriegsmann of Kiel) a series entitled "*Library of Criminalistics*," of which one volume has thus far appeared.

The present work, under the title "*Das Verbrechen und seine Bekämpfung*," was first published in 1903, and went into a second edition in 1906; the author has further revised it for the present translation. It is one of Germany's most notable contributions, among works having a general scope and an importance transcending national boundaries. In the three principal continental countries, a special trend of mastership has always been noticeable, — Italy emphasizing the anthropological side of crime (and secondarily the social), France

<sup>1</sup> "*Experimental Studies in Association*" (1895-1902); "*Criminal Law*" in *Hock's "Handbook of Legal Psychiatry"* (1901, 1906); "*Penal Treatment of Recidivists, and Habitual, and Professional Offenders*" (1907); "*Prison or Asylum?*" (1908); "*Psychasthenic Conditions*" in the "*Handbook of Nervous Therapeutics*" (1909); "*Treatment of Dangerous Lunatics and Habitual Drunkards*" in the "*Comparative Survey of German and Foreign Criminal Law*" (1909); "*Protection of Society against Dangerous Lunatics*" (1912); "*Handbook of Psychiatry*" (in collaboration; 1911 +).

the social side (and secondarily the anthropological), and Germany the psychological side. And in each country a vast number of useful contributions have only a local application. A book which takes account of all factors and has more than local value is a rarity, and even then its author is not always a master speaking from mature experience. The present work has made its place as one of those books which will live for many years to come and bear a message in all countries.

The first two parts of this book are devoted to a statistical study of the causes of crime, based in the main upon data from Germany. The conclusions reached by the author with regard to season, race, religion, urban and rural life, and occupation as causes of crime are much the same as those of similar studies of crime. He regards alcoholism as one of the most important causes of crime. While recent investigations by Professor Karl Pearson and his co-workers at the Galton Eugenics Laboratory in London have led to an opinion not so extreme as the author's as to the physical effects of alcoholism upon the offspring, nevertheless it remains true that indirectly in its effect upon the training and bringing up of offspring, as well as directly, alcoholism is a powerful force for crime.

In view of the present more or less widespread movement in this country to exterminate prostitution, it is worth while to note the opinion of the author, very emphatically expressed, that it is impossible to exterminate this social evil, and that it is wiser for governments to regulate it and keep it under strict surveillance than to make futile attempts to exterminate it which may cause more harm than good. At the same time he advocates severe repressive measures against procuration. His discussion of economic conditions, such as fluctuating wages and prices, strikes, etc., as causes of crime, though necessarily brief, is interesting and suggestive.

In discussing the individual causes of crime, the author, like most German criminologists, takes a very unfavorable attitude towards the theory of Lombroso and certain other criminologists that certain inborn abnormal physical characteristics are frequent causes of crime. At the same time the author believes that abnormal mental characteristics are prevalent among criminals, many of whom are either feeble-minded or insane in varying degrees. His low estimate of the importance of these abnormal personal characteristics is revealed by his classification of criminals, in which there is scant recognition of the part played by these characteristics in the causation of crime. These personal characteristics cannot be studied by the quantitative methods of statistics as well as the social causes of crime, because there are qualitative differences involved which cannot be accurately measured. So that a statistical study of these characteristics is not usually as fruitful as a similar study of the social causes.

In the third part, devoted to the measures to be used against crime, the author discusses several measures, such as the indeterminate sentence and probation, which are well known in this country, since they have been used here more than anywhere else. His brief statement of the fundamental principles upon which these and all other penal measures should be based is excellent. He is very certain that penal responsibility should be determined entirely according to a biological and social criterion and not at all according to a metaphysical or theological theory of a free will. Unfortunately many of the American criminologists, perhaps the majority of them, have not as yet seemed willing to take this position.

Throughout this work DR. ASCHAFFENBURG displays great caution in the use of statistics, and a most judicial attitude in expressing his opinions. It is an excellent thing that a book

of this nature has been included in the Modern Criminal Science Series; for it is a good example of the kind of study of which there is great need in this country. The statistical method is the only exact method of learning many things about the causation of crime and the effectiveness of the different kinds of penal treatment. In this country we still lack adequate means of gathering the necessary data, while not enough analysis is made of such data as we have. It is to be hoped that this book will serve as a stimulus to increase the statistical study of crime in this country.

UNIVERSITY OF MISSOURI,  
January, 1913.



## INTRODUCTION TO THE ENGLISH VERSION

By ARTHUR C. TRAIN<sup>1</sup>

PRACTICAL works, especially interesting and readable works, on criminology and penology are rare, and the subjects themselves are generally regarded as depressing and distasteful. We in America are interested in the picturesque side of the criminal and in his capture by astute officers of the law, and detective stories have an amazing sale. But once the crook is safely locked up we turn to something else. Criminals and prisons are associated in our minds with rough manners, coarse food and bad smells. Statistics bore us. It is easier and pleasanter to be interested in hospitals or organized charity. But of course there are in fact few subjects of greater importance than these two, involving as they do the moral health of the body politic, the protection of property, and our own personal security.

In Europe, and especially in Germany, minor public officials receive a particular education and training for their duties. There is a numerous and efficient civil service. With us most public officers hold their places by the grace of some "boss," and get their "jobs" as a return for political services rendered. Some of our court clerks were originally bar keepers, and many of our prison officers have had little better preparation for their tasks. Those em-

<sup>1</sup> Former Assistant District Attorney for New York County, author of "The Prisoner at the Bar" (2d ed. 1908), "True Stories of Crime" (1909), "Courts, Criminals, and the Camorra" (1912), etc.

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ployed in the minor functions of the administration of criminal justice, and particularly in and about prisons and penitentiaries, are apt to be persons who are unable to secure other and more attractive work. Thus there is a lack of intelligent observation as to the working of our institutions, and consequently a dearth of reliable data upon which to base scientific conclusions. Our progress is apt to be less a steady growth than an accidental jerk in the right direction. Sometimes it turns out to be the wrong direction. Not knowing very much about the subject, and being in a position to find out less, our legislatures seize new ideas (supposed to be in the nature of reform) and adopt them on the merest suggestion of sentimental women and political agitators. These ideas may be good ones, — stolen, or rather borrowed, from older countries, who have evolved them by years of study and observation. Sometimes, however, these ideas are schemes to put money in the pockets of contractors or defunct politicians on the public pay roll.

There are practically no penal or criminal statistics in the United States that have any real value, although this will not long be so. At the present time few reliable conclusions can be reached in regard to the spread and causes of crime or the various means of repressing it. Until economic conditions change fundamentally and politics is elevated to a moral science we shall probably never be in so favorable a position to study these things as our more serious-minded, more economically contented, and vastly more painstaking continental neighbors. What books we have on these important subjects are apt to be either superficial and sentimental, or else so dry and prosy that all interest is killed at the end of three paragraphs.

For this reason a work like the present, which could only have been written by a German about Germany, and which,

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based largely on the author's experience, combines with it the fruits of years of study and general observation, is enlightening and invaluable. Such a book could not have been produced in America. The author's concluding paragraph well describes the attitude with which this scholarly and broad-minded undertaking has been performed:

"Only dispassionate consideration that views impartially the phenomena which we call crime, which observes first and then concludes, — in a word, only the natural scientific method, — can smooth the way that leads to a knowledge of crime and criminals."

It is in the matter of observation that the author performs his most important service. He is far from being a propagandist, but on the other hand, he is not slow to demolish what he regards as unsubstantiated theories, based on inadequate or equivocal data. His analysis of statistics and his comment upon their probative value — could be pondered with profit by most other writers upon this and similar subjects of sociologic interest. With the premise that at their best all criminal statistics are apt to be highly misleading and of doubtful significance, — he weighs the vast mass at his disposal and considers their limitations. He wisely points out that what acts are regarded as crimes differ widely in different places; that many misdemeanors are merely infractions of arbitrary regulations; that temporary causes (such as grain famine) can be of startling consequence; that police activity or laxness can multiply or divide the total of apparent criminality; that arrests are no positive indication of crime, and that convictions to be so must be based on an effective administration of criminal justice. Moreover, he shows the inadequacy of the data obtainable in different countries. Most vital of all, he points out the danger of making sweeping deductions from extremely limited facts.



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The exhaustive tables compiled for this interesting and instructive treatise are highly illuminating, showing as they do the incontrovertible connection between crimes against property and economic conditions, sexual crimes and the season of the year, etc. There is hardly any subject connected with the causation of crime that does not come in for discussion and analysis, accompanied by a light-shedding array of figures drawn from local German sources.

His conclusions with respect to the effect of alcoholic stimulants on criminality are significant in a country where heavy drinking is regarded with leniency; and his observations on the small amount of criminality among prostitutes indicates that this class of unfortunates among women corresponds to that class among men which steals simply because it is "the easiest way" to live. Poverty and alcohol are, he believes, the two proximate causes of the great body of crimes.

It is with some personal satisfaction that the writer finds his own observations as to the lack of common physical characteristics among criminals corroborated by such an eminent observer, who comments on the temptation on the part of criminologists to seek for external signs of an inward lack of spiritual grace, and the failure of Lavater, Gall, Spurzheim, and Lombroso to demonstrate their existence and significance. The problem remains unsolved and a disposition to generalize about the physiology and psychology of a "criminal born" class is less observable than heretofore. Our author's discriminative ability in this respect contrasts favorably with Lombroso's surprising lack of critical faculty and his willingness to find far-reaching significance in masses of immaterial, trivial, and otherwise explainable details.

On the whole, our author's attitude is hopeful rather than optimistic, which may perhaps be attributed to his proximity to his subject and his unwillingness to accept every proposed

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remedy as a panacea. He is not handicapped by the feeling that to question the arrival of an immediate millennium is unpatriotic. He weighs the possibilities and finds to his regret that "brutality, recklessness, and licentiousness are spreading more and more in the growing generation," that "whoever has once got deep into the mire of criminal life is scarcely able to get onto firm ground again" (the recidivist), and that administratively "we have reached a point where the apparently firm foundations of criminal law appear to quake."

The remedies he believes for these things are to be found in those generally adapted to the increase of economic prosperity and the reduction of poverty, in education (particularly as to the effects of alcohol), in the establishment of coffee and recreation rooms, in the development of regard for law, in the care of neglected children and of released convicts, etc. And he makes a strong argument based on observation and statistics, in favor of the "conditional sentence" (corresponding to our "suspended sentence"), the parole, and the abolition of fixed terms of imprisonment.

It is characteristic that the author does not advance these propositions as necessarily of established desirability, although it seems that they have been so regarded in this country for some time. He bases his arguments and advocates their adoption not on theory but on collected data, while we usually proceed on the plan of trying anything that looks good to us, and then discarding it if we are disappointed in the results. Not all of his proposals are such as to commend themselves to a people among whom respect for law and effectiveness of procedure are so far below those of the author's own countrymen. His suggestion that the State might reimburse every citizen for the damage sustained by him from the criminal act of another is not likely to be adopted in a land where

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such a doctrine would undoubtedly immediately result in a deluge of criminal prosecutions instigated solely by a desire for financial profit on the part of the complainants.

The most important lesson to be learned from this admirable book is that which obviously the author has most at heart, namely, that as Krohne says, "even if you have the best law, the best judge, the best sentence, and the prison official is not efficient, you might as well throw the statute into the waste basket and burn the sentence." We in America (indeed it is not confined to us) are prone to find in the mere declaration of our principles known as law the final solution of all problems and the end of our labors.

We cheerfully pass Sunday closing ordinances and buy drinks at the "blind tiger," or, if we are not so hypocritical as to do this, innocently trust to the honesty of our fellow citizens not to do so either. But laws are only printed words on paper. Theories of government and of the administration of justice are of no value so long as they remain only theories. You can have the best system on earth and unless you have the right men to carry it on you will have corruption and chaos. You may have a prison so architecturally beautiful and so sanitary in its arrangements that it will delight every committeeman who goes to inspect it, but if the wrong man is in charge it will be a den of vice and a hell on earth.

The author urges that the training of judges should include some (voluntary) temporary service in penal institutions. We may doubt whether the uncertainties of political life would lead many candidates for judicial office here to qualify themselves in such fashion. Such a proposition is feasible in Germany, however, if not in America. The idea back of the suggestion is a fundamental one. Ours may be a government of laws and not of men, but the fact remains that all laws and all institutions must be administered by men, and

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that so far as society is concerned the effect of his period of imprisonment upon the convicted criminal may be of more far-reaching importance than his original offense. We have overlooked the fact that the imposition of sentence is not the end of the application of criminal science but rather the beginning.

There are few theories connected with the causes and the means of repressing crime which are not discussed and tested by the data at the author's command. As a comprehensive review of the subject no student of criminology can afford to neglect so thorough, well-balanced, liberal-minded, and authoritative a book as this, and while its scope is necessarily limited to German institutions it is safe to say that its lessons are equally applicable to our own.

ARTHUR C. TRAIN.

JUNE 1, 1913.



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- Abhandlungen des kriminalistischen Seminars. = Abhandlungen des kriminalistischen Seminars an der Universität Berlin. Ed. von Liszt. Berlin 1888+. Irregularly; new ser., vol. v., 1908.
- Allg. statist. Archiv. = Allgemeines statistisches Archiv., Tübingen. Irregularly.
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- Archiv für Rassen- und Gesellschaftsbiologie = Archiv für Rassen- und Gesellschafts-Biologie einschliesslich Rassen- und Gesellschafts-Hygiene. Berlin, 1904+.
- Archiv für Strafrecht = Archiv für Strafrecht (originally A. für preussisches Strafrecht, then A. für gemeines, deutsches, und preussisches Strafrecht). Ed. Goltdammer (cited often as Goltdammer's Archiv); afterward ed. Mager and Hahn; now ed. Kohler, J. Berlin, 1853+.
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- MSchrKrimPsych. = Monatsschrift für Kriminalpsychologie und Strafrechtsreform. Ed. Aschaffenburg, Kloss, von Lilienthal and von Liszt. Heidelberg, 1904+.
- Statistik des Deutschen Reiches; Neue Folge. Kriminalstatistik. Berlin, 1882+.
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# CRIME AND ITS REPRESSION

## INTRODUCTION

### § 1. Tasks and Methods

To the criminal judge the essential condition of punishment is the commission of an act that the law has branded as a crime<sup>1</sup> and threatened with punishment. "Nullum crimen sine lege." This view, "the corner-stone of criminal law,"<sup>2</sup> conforms to § 2 of the Penal Code: "An act can be punished only if the punishment was legally fixed before the act was begun." In other words, an act that is a crime under the existing law ceases to be one if the statute in question is repealed. This is the case, for instance, with § 175, for the repeal of which many grounds have been advanced both by jurists and by physicians. If the demand for its abolition should be granted, sexual intercourse between persons of the male sex would no longer be a crime.

On the other hand, § 2 withdraws from the judge's sphere of power all those acts the codification of which has been omitted, either purposely or by inadvertence, or the culpability of which is lacking owing to the wording of the statutes. There is no lack of examples: the sexual intercourse of women with one another, indecent acts committed by a father on his daughter,<sup>3</sup> the being an accessory to a crime the principal perpetrator of which is acquitted on the ground of irre-

<sup>1</sup> I have used the word "crime" in the following text, even when, according to the three divisions in our criminal code, I am speaking only of an offense or a misdemeanor.

<sup>2</sup> *Gaupp*, "Zur Reform der §§ 173, 174 RStGB." (*MSchrKrimPsych.* I, 111).

<sup>3</sup> *Ibid.*

sponsibility, all these cannot be punished. In order better to get hold of procurers and panders, and to make the thief of electric power accountable, special statutes had to be enacted.

Geyer<sup>1</sup> wonders at the view, which is a matter of course to the non-jurist, that, when an offender fails in his attempt to commit a crime because he does not make proper use of the means that he has chosen, he shall still be punishable, and as an example he mentions a cook who put a few grains of powder in a dish under the bed of her rival and set them off with a match. Because her plan failed, and was bound to fail, owing to her inability to use properly the means she had chosen, the woman should be acquitted! Zucker<sup>2</sup> gives the following example of an unpunishable attempt that failed because the object was unsuitable: "In our opinion the crime of attempted incest does not exist when a man cohabits with a woman, believing her to be his sister whereas in reality she proves to be the foster child of his parents." It may be impossible criminally to prosecute such a man; but, psychologically, the subsequent proof that there is no blood-relationship between the persons does not make the act one whit the less abominable. On the other hand, under some circumstances a grave crime may be a laudable act, as, for instance, the murder of Marat by Charlotte Corday, or the act of a mother who steals, or prostitutes herself, in order to save her sick child.

The thinking judge, with whom the judgment of the individual case rests, and who is not content merely to establish the purely external facts and the applicability of a certain section and a certain penalty to the act, cannot take much satisfaction in his profession. "A most unhealthy formalism in

<sup>1</sup> Geyer, "Über die sogenannten untauglichen Versuchsverhandlungen" (ZStW. I, 35).

<sup>2</sup> Zucker, "Noch ein Wort zur Lehre vom untauglichen Versuche" (Archiv für Strafrecht, XXXVI, 370).

the question of punishableness, and a most far-reaching judicial discretion in the extent of the penalty, stand in contradiction to each other.”<sup>1</sup> The written law holds the judge within rigid limits, that leave but little room for the consideration of psychological motives. That the circumstances under which a crime is committed should be taken into account, is shown by the provisions regarding needy condition, extenuating circumstances, irresponsibility of insane persons, full and partial immunity from punishment, as well as by the fact that the penalty is increased if an offense is often repeated. And yet these are only a few points, and are far from enabling us to do justice to the psychological judgment of such a complicated phenomenon as crime.

For that purpose more study is necessary than that of the commentaries on the criminal code. “I see the deepest reason for many of the defects of our present conditions in the purely juristic education of our theoretical and practical criminalists. I do not for a moment demand that the criminal judge and lawyer should make anthropological or statistical investigations; but I do demand of him that he should be as familiar with the results of criminal biology and criminal sociology as with the provisions of the criminal code and the decisions of the national courts.” So says von Liszt,<sup>2</sup> who thus values the study of crime as a social phenomenon and of the nature of the criminal as highly as he does the knowledge of the laws — and rightly so. Our administration of criminal law is no abstract science, but an applied policy towards criminals.

The necessity of establishing its foundations more firmly cannot be overlooked, except by him who will not or cannot see what criminality means to the State. The criminal sta-

<sup>1</sup> *Wach*, “Zukunft des Strafrechts.” Rede gehalten in Düsseldorf auf der Jahresversammlung der Rheinisch-Westfälischen Gefängnis-Gesellschaft.

<sup>2</sup> *von Liszt*, “Kriminalpolitische Aufgaben” (ZStW. IX, 456).

tistics for the year 1909 show 536,603 persons convicted of 629,271 acts, — 1192 convicts per 100,000 persons of punishable age. And it must be borne in mind that the statistics deal solely with crimes and offenses against national laws, not with those against individual State laws, and thus not with the numberless minor offenses, which can safely be estimated at 2,000,000, at least. Whoever knows this (and every jurist should know it) is curiously affected by the common attempt to weaken the effect of these figures by calling attention to the many cases of neglected vaccination and such minor matters. The seriousness of the state of affairs which makes such trivial remarks entirely inappropriate most certainly demands a clear and unobstructed view.

In 1909 the German courts pronounced 32 death sentences and condemned 5 persons to prison for life; the sum of the penitentiary ("Zuchthaus") sentences would amount to at least 22,000 years; of the prison sentences, to 52,000 years. Von Krohne estimates the cost of criminal prosecutions and the carrying out of sentences in Prussia at 120 million marks. Is it necessary to add a word of explanation, as to why the judge should leave the courtroom and the study and go out into life, among the people, so that he may learn to know criminals, and then, in a different way and better equipped, take up again the struggle against crime?

Whoever sees in the science of criminal law merely a training for logical thought, and is glad when he has found the dead formula that fits the living deed, will find nothing significant in the figures quoted. But he who is not satisfied to judge according to the letter of the law will not care to proceed without contact with the daily life of the people, and, above all, he will not be content to lack the knowledge of criminal sociology which is offered him in the statistics of criminals or of morality.

They show under what external circumstances a crime

comes to be committed, how the world in which we live exercises its influence and directly and indirectly gives the incentive to criminal acts. But they also permit us to perceive that, besides the social processes that operate on the individual, there are also in him physical and mental causes. Thus we gain a deepened insight into the psychogenesis of crime. A wealth of new aspects confronts us, — new questions to which answers cannot always be given. For there can be no doubt on this point, that the psychology of crime and of the criminal is no finished science — it is too young for that. But it uncovers one after another the causes that produce crime; it illuminates the depths that are hidden from the judge with his ever-ready decision; it shakes the foundations of the criminal law. Not, however, that we are to watch in despair the collapse of an apparently firmly built structure. Criminal psychology seeks to probe the causes of crime and to measure the efficacy of punishments; on the new foundation it hopes to build up a new criminal law, which will protect society better than the present one and secure the individual from the attacks of the criminal. That is its goal.

But which is the path that leads to it?

“Criminals must not be regarded as the refuse of society, they are rather a part of it, — as a wound is a part of the body.” This remark of Corr  <sup>1</sup> is as striking as it is true; the criminal world is an inseparable component part of human society, with which it is most closely united in growth and from which it continues to draw fresh nourishment. Only within and in relation to society can crime come into being. But if it is really the sore spot on the social body, we are tempted to extend the comparison, and to proceed with the study of criminality in the same way that clinical research is usually undertaken.

<sup>1</sup> Corr  , “*Essai sur la criminalit  *,” p. 76.

The first question to be considered in medicine is the cause and origin of a disease, — the etiology; then the symptoms; from these we form the diagnosis, the distinction from other diseases; and finally we come to therapy. Proceeding in this way, we should first have to investigate the causes of criminality; then the different forms under which crime appears. The diagnosis corresponds to the question of the classification of criminals, to the question of the existence of Lombroso's "born criminal." When we are at last in possession of certain knowledge in this direction, when we can survey, as far as possible, the nature of crime and its causes, then we come to consider the most important practical question: How shall we treat this sore on the body of society? We shall have to consider and to judge the existing measures, and — if previous methods of treatment should prove to be inadequate — to find out what can be done, — a task as important as it is absorbing.

The comparison with natural scientific subjects shows us, not only the direction we should follow, but also the method we should use, — that of objective observation. When we have seen under what external circumstances a crime is committed, we shall have to try to find the relation between the crimes committed and the phenomena of life that are familiar to us.

Von Liszt<sup>1</sup> has come forward in a lecture as an exponent of the view that the roots of criminality, in so far as it is not a social symptom of disease, must be looked for in normal social life. I am entirely of his opinion; and I have, therefore, endeavored not to base my explanations on individual cases, which merely show how life and its irritants affect one person, but on the phenomena of masses, the most frequent crimes.

<sup>1</sup> "Die gesellschaftlichen Faktoren der Kriminalität" (ZStW. XXIII, 203).

With the individual case, absorbing as it may be psychologically, the peculiarity of the individual obscures our view of the universally valid causes, and chances cannot be separated from the regular phenomena. We shall, therefore, without denying the importance of observing individual cases in detail, keep in the main to the large numbers that the criminal statistics<sup>1</sup> offer us.

But here we meet at once with two great difficulties. One lies in the collection of statistical material,<sup>2</sup> the other in the making use of it. It is not feasible to use absolute numbers as a measure for comparison. We shall see, for instance, that in England, during the periods from 1861 to 1863 and from 1879 to 1881, crimes against the person were as 100:102, crimes against property, as 100:110, yet this does not show that these crimes have increased. As a matter of fact, the population has increased by more than 30% in the same period so that it would be a gross error to assume that thefts and cases of assault and battery have increased. It is not even entirely correct to establish an exact parallel between the increase in crime and the increase in the population. The increase in the population is felt chiefly in the swelling of the number of minors, and the percentage of crime among these is greater than among adults. With this restriction — the defect cannot be removed by calculation — the method used in the criminal statistics of the German Empire (that is, of relating the crimes committed to the number of inhabitants over twelve years of age) may be regarded as the fairest.

<sup>1</sup> German criminal statistics appear annually, excellently revised and arranged in one volume, published by the Imperial Statistical Bureau. Puttkammer und Mühlbrecht, Berlin.

<sup>2</sup> Compare, as regards the whole question: *von Ottingen*, "Moralstatistik," 3d ed., p. 440; *von Scheel*, "Zur Einführung in die Kriminalstatistik, insbesondere diejenige des Deutschen Reiches" (Allg. statist. Archiv., I, 185); *von Mayr*, "Die Nutzbarmachung der Kriminalstatistik" (MSchrKrimPsych. I, 42).



But even the relative numbers cannot be used as they stand. Above all, it must be considered at what stage of the legal proceedings the census must be taken. Should the crimes, the accused persons, or the convicts be counted? In the crimes we find the act, but not its producer, — the consideration of whom is the most important point for us. In many crimes several persons are involved. Of the punishable acts which were followed by convictions in 1903 in Germany, 45,437 (=7.5%) were committed by several persons. These cannot be disregarded, especially as they involve at least 100,000 criminal persons.

Among the accused, again, there are many innocent persons, as well as others whose guilt cannot be proved. The number of persons acquitted amounted in 1909 to not less than 148,211, more than a fifth of all those accused. All these are without significance to us, though not in every respect. Acquittals, indeed, are subject in the highest degree to the effect of the general feeling for law, to current popular views. This is shown by a comparison of the administration of justice in different countries; I need only mention the frequent acquittals in Latin countries of men driven to crime by the unfaithfulness of their wives. But even with us similar phenomena are not lacking. Every attorney who is defending a person charged with arson objects, in his client's interest, to having farmers on the jury, because experience has shown that in doubtful cases they are more likely to find the accused guilty than are men who live in cities; and, on the contrary, when a man is charged with violation of oath, his attorney will prefer peasants as jurors. Even the judge is more influenced by popular views than he realizes, and pays tribute to them. This is no reproach; to assume that the judge is not also a child of his age and environment would be to deny the foundations of our whole thought. Looked at from this

point of view, acquittals are of the greatest interest; they afford us an insight into the opinions of certain times and certain peoples.

Another objection to making use of the number of charges brought is their dependence on the skill of the police; it is largely a matter of the cleverness and activity of the police whether a criminal prosecution is possible. And, finally, the "criminal irritability"<sup>1</sup> makes itself felt, which causes the public to claim the aid of the criminal judge in ever increasing degree.

Thus we come to the use of the number of convicted persons. In this way we are of course obliged to leave out of account all the numerous cases in which the criminal is unknown. But, on the other hand, in considering the convicts, we are able to ascertain most of the factors that come under consideration in seeking out the origin of the crime. Hence it is the number of convicts that seems best adapted for our use. The trivial errors that still cling to these statistics can scarcely be avoided; the advantage of absolute accuracy, which their correction would give, would be far too slight to justify the vast amount of labor that would be necessary.

As has been mentioned, the minor offenses are lacking in our Imperial statistics; thus, they leave unnoticed the whole great army of beggars, tramps, and prostitutes. As regards these, we must seek other sources. Some crimes are represented in the statistics by figures that are far below the reality. This is true, for instance, of offenses under § 175, and especially of criminal abortion, of which Lewin<sup>2</sup> rightly says: "Such an open, universally known, and universally disre-

<sup>1</sup> *Seuffert*, "Die Bewegung im Strafrechte während der letzten dreissig Jahre," Dresden, von Zahn & Jänsch, 1901, p. 64.

<sup>2</sup> *Lewin und Breuning*, "Die Fruchtabtreibung durch Gifte und andere Mittel," Berlin, 1899, Aug. Hirschwald, p. 7.

garded, mockery of the law as exists should not be permitted to continue." If, as regards this offense, statistics leave us in the lurch, we must look for aid elsewhere; that this is possible, and how it is so, Lewin's book has shown. In respect to the principal crimes, however, especially theft and assault and battery, the statistics are an inexhaustible resource, giving us new and valuable results on every fresh examination.

A further difficulty, to which von Liszt<sup>1</sup> particularly calls attention, is this, that the criminal statistics deal with the technical juristic conceptions of crimes used in the criminal code, which do not coincide with the psychologically effective motives of the act. The Penal Code formulates its conceptions of crimes according to the interests injured or menaced by the act, and from this point of view divides the crimes into groups. In criminal statistics which are intended to show the causes of crime, another method of grouping is necessary. A few examples will show this more clearly. During the years 1892-1895 there was a considerable decrease in the number of thefts, simple thefts (not repeated) diminishing from 107,904 to 86,656, more serious cases from 12,228 to 10,235; thus the decrease amounted to 17% and 20%. Another crime which, with theft, is reckoned among the crimes and offenses against property, increased by 15%, namely, malicious mischief. Now, if we look further for crimes which show a similar increase, we come across the convictions for insult and assault and battery. These "crimes against the person" increased in the same period by 18% and 21%. This difference between the course of theft and the course of malicious mischief, which is noticeable at all times, is so striking that certain reasons must exist for it. They appear at once when we compare the psychological processes involved in both crimes. Theft is usually carried out with deliberation

<sup>1</sup> von Liszt, *loc. cit.* p. 474.

and premeditation, as quietly and secretly as possible, most often at night; malicious mischief is seldom done deceitfully; as a rule it is inflicted in a rough, brutal way, loudly, openly, frequently as the result of alcoholic excesses. This explains the similarity between it and the figures for assault and battery and insults, which usually spring from the same cause. Thus, psychologically, malicious mischief should be grouped with assault and battery, not with thefts.

A further example is found among the sexual crimes, which include inducing women to prostitution, as well as rape. Now the former is always based on the lowest kind of avarice. It is an act always carried out with deliberation, more often by women than men, and in many cases by persons who are long past the age of sexual attraction. Rape, however, arises from the brutal and uncontrolled sexual excitement of the moment; it can, of course, only be committed by men. Many cases of insult ("Beleidigung," § 185) would have to be characterized psychologically as sexual crimes.<sup>1</sup>

Crimes that differ so widely psychologically should not be classified in one group, if criminal psychological knowledge is not to be always in danger of being led astray. The Imperial criminal statistics distinguish between four groups: crimes and misdemeanors, 1, against the State, public order, and religion; 2, against the person; 3, against property; 4, crimes and misdemeanors in office ("im Amte"). Seuffert<sup>2</sup> is right in emphasizing that only the last group is of value for the comprehension of criminality.

It cannot fail to be recognized that statistics still leave much to be desired; for improvement in which we cannot hope till the needs of a practical criminal psychology shall have been more exactly determined. But the foregoing makes clear our

<sup>1</sup> *Aschaffenburg*, "Zur Psychologie der Sittlichkeitsverbrecher" (MSchr-KrimPsych. II, 400).

<sup>2</sup> *Seuffert*, *loc. cit.* p. 23.

second difficulty, that of using the facts established by criminal statistics. We see in the figures crimes expressed only in the terms of the criminal law. Hence, we must be cautious about drawing far-reaching conclusions from them. An old and proven principle of medical science teaches us to beware, in all examinations, of confusing the "post hoc" with the "propter hoc." Only, for instance, if we see the same symptoms appear repeatedly after the application of a remedy are we justified in bringing the medicine into causal connection with the result. Hence, the same principle applied to criminal statistics also demands that we should infer an inner connection, only if we repeatedly find the same relations between external circumstances and an act that we are inclined to believe is caused by these circumstances. Whether these causes are sufficient to explain the occurrence of the crime, should be made the subject of the most mature consideration. Repeated examination and careful criticism will prevent our accepting false causes, will guard us from simple errors; from advancing false assertions in which the wish is father to the thought — and these are not so very rare — our scientific honesty must protect us.

Only the most careful restraint can prevent our confusing apparent with true causes. If, for instance, we find that the love of pleasure has an unfavorable influence on criminality, it would be incorrect to make love of pleasure responsible for an increase in crimes, especially those against the person. It is only the apparent, outward cause; the true one is the alcohol consumed at places of amusement and on festive occasions. The difficulty of interpretation makes only slow and cautious progress possible. We must never forget that the criminal statistics give only the naked figures; that they take no account of minor offenses, and can, therefore, give no exhaustive picture of the criminal world.

Nevertheless, it is worth while to try to summarize what these figures can teach us, to try to breathe life into the dry numbers. Though some paths may be trodden in vain, and some may prove to be blind, yet the trouble taken is rewarded by the new points of view obtained, from which another may see the goal more clearly and seek to reach it with perhaps greater success.



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## PART I

### THE SOCIAL CAUSES OF CRIME

#### § 2. Classification

IN view of the prevailing uncertainty as to whether we are justified in bringing a criminal act into causal connection with the accompanying conditions, the outcome of any attempt to group the causes is dubious from the beginning. Nevertheless, I have divided them into two large groups: social causes, and individual causes. This division, however, is not intended to anticipate the discussion of the causes, nor to assign to those dealt with their ultimate place, but merely to arrange them in a scheme for discussion. We shall soon see that the first group concerns only external conditions the general fluctuations of which influence the commission of a crime; the second group will always lead us, in the examination of the individual's personal inclination to crime, back to the soil from which the individual springs, and thus direct us back along the way to the social causes. For the soil in which crime generates von Mayr has coined the term "external impressional influences," for the individual disposition, "personal impulsional influences." The latter term in particular contains a certain judgment of the individual factor which seems to me to go too far. For we shall see that in most criminals there is no inner impetus towards crime, but merely the inability to withstand the pressure of external driving forces. Hence it seems to me that the old terms correspond best to the real conditions. To what extent the two groups of causes cover each other, and how



often a careful examination makes it necessary to change the grouping, will appear later.

### § 3. Crime and Season

Some crimes show a striking dependence on the season. Differences in their frequency in summer and in winter are noticeable in all countries; hence, it is not surprising that this phenomenon has long been the subject of special attention. Yet, in spite of this lively interest, we are still rather

TABLE I

SEXUAL CRIMES IN RELATION TO SEASON IN FRANCE. 1827-1900  
(After Ferri, percentages reckoned by the author.)

MONTHS	SEXUAL CRIMES IN FRANCE. 1827-1869				DAYS OF CONCEPTION: <sup>1</sup> 1863-1871	
	ON ADULTS		ON CHILDREN			
	ABSOLUTE NUMBERS	%	ABSOLUTE NUMBERS	%	ABSOLUTE NUMBERS	%
January . . . . .	584	7.09	1,106	5.57	2,603	7.84
February . . . . .	563	6.84	1,041	5.24	2,661	8.02
March . . . . .	643	7.82	1,366	6.83	2,608	7.85
April . . . . .	608	7.39	1,700	8.56	2,887	8.69
May . . . . .	904	10.98	2,175	10.95	3,060	9.21
June . . . . .	1,043	12.67	2,585	13.03	3,018	9.06
July . . . . .	860	10.45	2,459	12.42	2,911	8.76
August . . . . .	794	9.64	2,208	11.13	2,742	8.25
September . . . . .	653	7.93	1,773	8.93	2,810	8.46
October . . . . .	532	6.46	1,447	7.29	2,625	7.91
November . . . . .	514	6.24	983	4.95	2,620	7.89
December . . . . .	534	6.49	939	5.05	2,665	8.02
Unknown . . . . .	1,421	...	16,160	...	....	...

at a loss as regards the deepest causes of these fluctuations and are scarcely able to get beyond surmises. This, however, does not detract from the importance of the facts themselves.

Table I, after Ferri,<sup>2</sup> shows how sexual crimes in France were

<sup>1</sup> Instead of the irrelevant days of birth.

<sup>2</sup> Ferri, "Das Verbrechen in seiner Abhängigkeit von dem jährlichen Temperaturwechsel" (ZStW. II, 38).

distributed over the different months during the years 1827-1869. The commission of these offenses becomes more frequent from March on. The increase is rapid until the maximum is reached in June, after which it decreases just as rapidly, and from October to February remains at approxi-

TABLE II

THE CRIMINALITY OF GERMANY ACCORDING TO THE YEAR AND MONTH WHEN THE CRIMES ARE COMMITTED

("Statistics of the German Empire," N. F. LXXXIII, II, p. 52.)

If there are 100 offenses per day in the year, there are per day in the month:

KIND OF CRIMES AND OFFENSES	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
Crimes and offenses against national laws . . . . .	95	97	90	92	99	103	105	109	105	103	103	98
Resisting officer . . . . .	89	94	89	94	97	104	109	117	112	104	99	90
Breach of the peace . . . . .	94	99	96	100	98	101	105	110	106	102	100	89
Rape . . . . .	64	66	78	103	128	144	149	130	108	90	68	69
Obscene acts, distribution of obscene literature . . . . .	62	74	83	101	130	150	141	133	109	84	69	64
Insult ("Beleidigung") . . . . .	83	89	85	93	108	115	120	122	113	99	93	80
Infanticide . . . . .	89	127	127	121	118	102	95	80	91	86	82	87
Simple assault and battery . . . . .	76	80	79	95	108	116	124	134	121	102	88	74
Aggravated assault and battery . . . . .	75	78	78	95	108	113	118	133	124	106	93	78
Crimes against property . . . . .	109	108	96	90	93	93	92	93	93	104	113	117
Petit larceny, also when repeated . . . . .	113	115	98	85	87	88	88	92	92	106	117	121
Grand larceny, also when repeated . . . . .	102	107	92	89	94	98	98	94	96	106	112	111
Embezzlement . . . . .	100	97	94	94	98	100	103	101	98	104	105	108
Fraud, also when repeated . . . . .	112	108	95	88	92	92	92	93	90	88	102	121
Malicious mischief . . . . .	88	92	98	108	109	106	104	104	103	101	99	88

mately the same low point. These differences between the months are much more clearly marked where the objects of the crimes are children, the month of June exceeding the winter months by more than 130%.

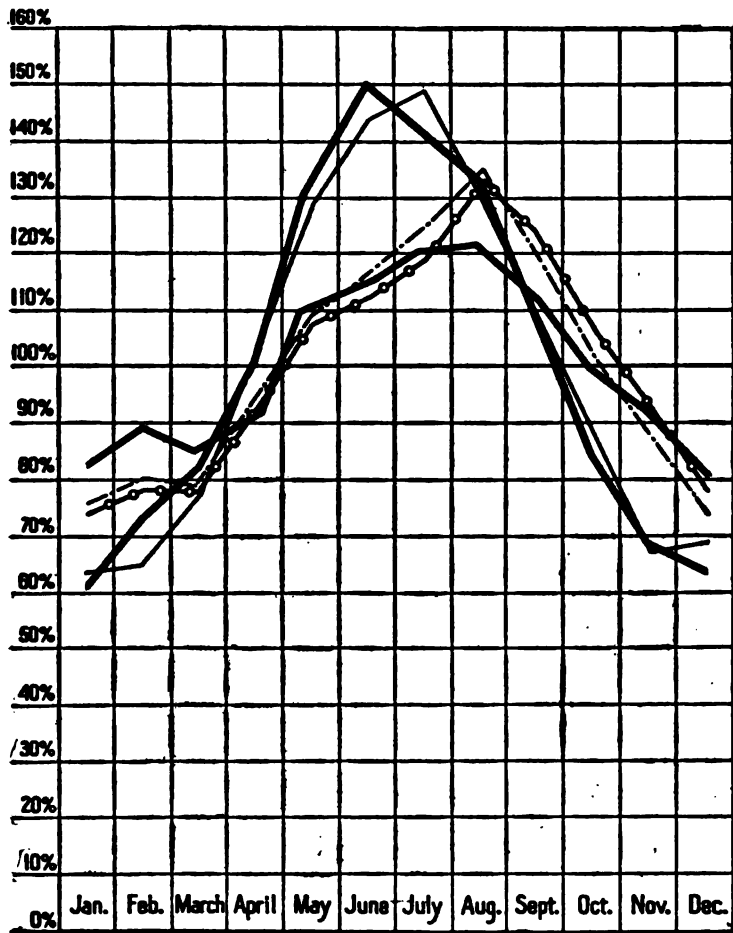
The statistical card-records of convicted criminals in Ger-

## PLATE I

## CRIME AND SEASON IN GERMANY (1883-1892)

("Statistics of the German Empire," N. F. LXXXIII, II, pp. 52, 53.)

- Sexual crimes.  
 — Obscene acts.  
 - - - Simple assault and battery.  
 —○— Aggravated assault and battery.  
 — Insult.



many also contain a column: "Time when the deed was committed." The results of these records, which have been kept for years, are presented in the criminal statistics for 1894.<sup>1</sup> The calculation is based on the period from 1883 to 1892; its value is considerably increased by the fact that the inequalities in the length of the months have been corrected by exact calculation. Consequently, the figures given in Table II can be compared without alteration.

TABLE III

DISTRIBUTIONS OF THE CONCEPTIONS IN THE DIFFERENT MONTHS IN GERMANY  
(1872-1883)

(Statistical Year-Book for the German Empire," 1885, p. 21.)

If the average number of cases per day in the year is 100, the number per day in the different months is:

MONTHS	ILLEGITIMATE BIRTHS	BIRTHS INCLUDING STILLBIRTHS
January . . . . .	91	100
February . . . . .	95	99
March . . . . .	103	99
April . . . . .	110	103
May . . . . .	116	106
June . . . . .	109	104
July . . . . .	104	100
August . . . . .	100	97
September . . . . .	95	95
October . . . . .	91	95
November . . . . .	88	96
December . . . . .	100	105

The increase in sexual crimes begins in Germany in March, just as it does in France; the maximum is reached in July, after which the number quickly decreases; a very similar curve is shown by "obscene acts," except that in this case the maximum is reached in June. The fluctuations are tremendous. July exceeds the winter months by more than double

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. LXXXIII.

the number of sexual crimes. This is strikingly shown on the preceding plate (I).

We come now to the question: What is the significance of this phenomenon, which may be observed in the same way in all other countries as well? As long ago as in 1831, Villermé<sup>1</sup> pointed out that the births are by no means equally distributed over the different months; that, on the contrary, they show perfectly regular fluctuations in frequency. The births are, of course, a matter of indifference to us, but of greater importance is the psychological significance of the time of conception. As Table I, taken from Ferri's work, shows, the increase of the conceptions in May and June in France is unmistakable, although the differences of the single months among themselves are not very great.<sup>2</sup>

In Germany the differences in the months of conception are quite independent of the marriages; Lent and the harvest season cause the latter to be postponed to more convenient times, so that the curve of the marriages shows two deep incisions. The variation in the number of births in the different months is not, at first sight, very great; the days of conception culminate at two points, one in December (the holiday season), the other, the highest, in May. This month exceeds the lowest one, September, in ten years, by 142,000 births; this is a proof of how significant in the course of longer periods the variation in the different months becomes.

But a matter of special interest is the relation of the legitimate to the illegitimate births. The number of illegiti-

<sup>1</sup> Villermé, "De la distribution par mois des conceptions et des naissances de l'homme" (*Annales d'hygiène publique et de médecine légale*, 1831, p. 55).

<sup>2</sup> The preponderance of the conceptions from April to June is most clearly shown in the Swiss statistics for the years 1871-1890. (Beazola, "Statistische Untersuchungen über die Rolle des Alkohols bei der Entstehung des originären Schwachsinnnes," *Internat. Monatsschr. z. Bekämpfung der Trunksitten*, XI, 180).

mate conceptions rises rapidly from March on, reaches its maximum in May, as does the number of legitimate conceptions, and then sinks again rapidly. From September on, it remains, apart from a slight rise in December, till February, below the average. Thus we see that the differences in the days of conception among the unmarried are much more marked.

The comparison of these dates shows the influence of the season in the whole sphere of sexual intercourse. It is less pronounced in the legitimate conceptions, but remarkable enough, because of the size of the numbers under consideration. This phenomenon is more noticeable in the illegitimate conceptions, and much more striking in the offenses against chastity, and is most marked among these again in those crimes that are most atrocious, namely, those the objects of which are defenseless and immature children. From these facts we must draw the conclusion that some connection exists between sexual excitability and the season of the year. The fact that this influence on sexual life, of which we are usually entirely unconscious, also appears in the sphere of normal and legitimate sexual intercourse, and that this dependence on the season is the more striking, the more reprehensible is the manner in which the sexual instinct is gratified, requires an explanation.

Other social phenomena also show regular fluctuations in frequency, above all suicide, the curve indicating which takes precisely the same course as that of sexual crimes. In the winter months, at a time, that is, when economic necessity pushes many a man to the verge of despair, relatively few people die by their own hand; the highest point in the tendency to commit suicide occurs in June, in some countries in May.<sup>1</sup>

<sup>1</sup> von Mayr, "Der Selbstmord" (Allg. statistisches Archiv, 1896, p. 722); Soquet, "Abhängigkeit der Selbstmorde von der Witterung in Frankreich von 1827-1880" (Annales médico-psycholog., 1890, p. 41).

Moreover, this regularity — a rapid rise of the curve in spring and as rapid a sinking in midsummer — is found, not in Germany alone, but also, without exception, in all other European countries.

TABLE IV  
SUICIDE AND TEMPERATURE  
(After Durkheim: "Le Suicide," p. 93.)

Months	FRANCE 1866-1879		ITALY 1882-1888			PRUSSIA 1876-1878, 1880- 1882, 1884-1886	
	MEDIUM TEMPER- ATURE	SUICIDES MONTHLY TO 1000 ANNUAL SUICIDES	MEDIUM TEMPERATURE		SUICIDES MONTHLY TO 1000 ANNUAL SUICIDES	MEDIUM TEMPER- ATURE 1846-1877	SUICIDES MONTHLY TO 1000 ANNUAL SUICIDES
			ROME	NAPLES			
January . .	2.4°	68	6.8°	8.4°	69	0.28°	61
February . .	4.0°	80	8.2°	9.3°	80	0.73°	67
March . .	6.4°	86	10.4°	10.7°	81	2.74°	73
April . . .	10.1°	102	13.5°	14.0°	98	6.79°	99
May . . .	14.2°	105	18.0°	17.9°	103	10.47°	104
June . . .	17.0°	107	21.9°	21.5°	105	14.05°	106
July . . .	18.9°	100	24.9°	24.3°	102	15.32°	99
August . .	18.5°	82	24.3°	24.2°	93	14.60°	90
September .	15.7°	74	21.2°	21.5°	73	11.60°	83
October . .	11.3°	70	16.3°	17.1°	65	7.79°	73
November .	6.5°	66	10.9°	12.2°	63	2.93°	70
December .	3.7°	61	7.9°	9.5°	61	0.60°	61

Morselli<sup>2</sup> seeks the explanation in the temperature. A comparison between the temperature curve and the number of suicides does, indeed, show a remarkable parallelism until June; but, from then on, the suicides rapidly decrease, whereas the heat of summer grows greater. During the heat of August there are considerably fewer suicides than in the cool month of April. Hence the temperature in itself cannot, or at least, cannot alone, produce the remarkable phenomenon. Yet I do not agree with Durkheim,<sup>3</sup> who excludes the cosmic influ-

<sup>1</sup> All months reckoned as having thirty days.

<sup>2</sup> Morselli, "Der Selbstmord," p. 93.

<sup>3</sup> Durkheim, "Le suicide," Paris, Felix Alcan, 1897, p. 82.

ence altogether. After all, it is still possible that the increase in external warmth does at first exert an exciting influence on man, which is followed, when the heat is long continued or increases, by a reaction.

Another explanation is much more seductive, that is, that the number of suicides is connected with the length of the days, with the number of hours of light.<sup>1</sup> The length of the days and the frequency of suicides in the different months do, indeed, entirely agree with each other. Nevertheless, the explanation seems to me untenable, because most suicides are not committed in the daytime, but early in the morning or at night. In addition, it is difficult to find in light a psychological motive for putting an end to life.

Drowning is not a very common mode of suicide; in Prussia, for instance, in 1893, of 6409 suicides, only 1145 (= 18%) put an end to their lives in this way. Hence the relative infrequency of suicides in winter cannot be dependent on the mere mechanical difficulty of this manner of death, as has already been suggested. This supposition entirely fails to account for the rapid decrease from the middle of the year, and for the fact that there is the same distribution of suicides in countries where the rivers and lakes do not freeze.

All explanations of the frequency of suicide in summer that are based on external influences are unsatisfactory. We must be content with the fact as such. It is important enough, clearly showing, as it does, the existence of periodic fluctuations of the psychic balance. At a time when the external conditions of life afford comparative security against want and misery, such far-reaching and deeply felt factors affect man and weaken his power of resistance that he resorts to suicide. In the absence of any other comprehensible cause for this,

<sup>1</sup> *Chaussinand*, "Étude médico-légale sur la statistique criminelle en France," Lyon, 1881.



there remains only the explanation that our organism is subject to acute periodic changes.

These periodic fluctuations are well known to us in the sphere of sexual life. The sexual instinct makes itself felt in animals at certain definite times only. The more animals have become accustomed to men, have been domesticated, the less sharply defined is this periodic sexual excitement, which among wild animals leads to desperate struggles for the possession of the female.

To superficial observation sexual excitability in man is not subject to fluctuation. But Havelock Ellis<sup>1</sup> has recently endeavored to show that menstruation in women is analogous to the period when animals are in heat, and also that even men are not entirely free from a regular periodicity of sexual functions.

Enticing as is the hypothesis that the sexual life of men is also subject to periodic fluctuations, it still requires further examination and proof. Far more justifiable is the assumption that menstruation is an abortive expression of sexual excitement and that it still proves today to how great an extent in the realm of sexual functions periodicity is preserved. This is also shown by experience with some insane persons; during menstruation, also often at the time when it is expected but does not occur, irritability in general, and sexual excitability in particular, increase.

The establishment of physiological wave-movements in the life of women<sup>2</sup> surely permits us to assume a similar cause for the proved fluctuations in psychic balance which we found in

<sup>1</sup> *Havelock Ellis*, "Geschlechtstrieb und Schamgefühl." 2d ed., Würzburg, R. Stubers Verlag, 1901.

<sup>2</sup> *August Hegar*, "Zur Frage der sogenannten Menstruationspsychosen" (*Allg. Zeitschrift f. Psych.*, LVIII, 357); and *R. Wollenberg*, "Die forensisch-psychiatrische Bedeutung des Menstruationsvorganges" (*MSchrKrimPsych.*, II, 36).

the suicides, and for the increase in sexual excitement shown by the multiplied conceptions and offenses against chastity that occur in the spring. Accordingly, we may express the surmise that the decrease and increase of the sexual instinct, which embrace all the modes of sexual gratification, from conjugal sexual intercourse to brutal attacks on children, correspond, though in a much weaker and altered form, to "heat" in animals.

For the commission of sexual crimes this view is of so much more importance, because all other explanations are inadequate. The simplest explanation of the phenomenon, and the one that first suggests itself, is, that the season multiplies the opportunity. For this reason Gross<sup>1</sup> flatly rejects my view. "In summer people spend much more time outdoors, individuals are found alone much oftener than in winter, when in their houses; work in the fields, walks and other outdoor activities, offer numerous occasions for two persons to be alone, and interruptions are much less to be feared. Cries for help (rape) are much less effectual outdoors than in the house." It must be admitted that this is true. But even taking into consideration the excessive drinking that goes on in summer and the increased external warmth, all these co-effective and favorable causes still leave the question unanswered, why the number of crimes decreases so rapidly in August and September although at that time the external conditions would rather facilitate the commission of offenses. Gross adds further, in refutation: "Any expert could confirm the statement that an incomparably greater number of sexual crimes are committed outdoors than in the house." In 1903, of 10,226 punishable acts against §§ 176-179 (rape and assaults on children), 8856 (= 87%) were against § 176. Thus we see that this crime determines in the main the annual

<sup>1</sup> *Hans Gross*, "Arch. Krim. Anthr.," XII, 370.

curve. Of 106 persons who were convicted in accordance with § 176,<sup>1</sup> 62 had made their attacks on children in the house, 35 outdoors, and 9 both indoors and out. There were 173 separate acts committed indoors, as against 54 outdoors. Hence we see that the multiplication of opportunity does not weigh as heavily as one would suppose at the first glance. There remains scarcely another supposition than the one discussed.

The psychological application of the fact itself is of course independent of the attempted explanation. Whether the latter be right or not — we are all subject to an unusual increase in sexual excitability in the spring without being conscious of it. With the realization of this fact, we gain an insight into motives which, unlike intelligence or proved brutality, and general criminal tendency, are not recognizable in the individual act.

Infanticide, the murder of the illegitimate child during or directly after its birth (§ 217, Penal Code), is most frequent in the months of February and March. There are 127 cases in each of these months — a number approached only in April and May — as against 80 to 95 in the period from July to January. Births in February, March, and April correspond to the conceptions in May, June, and July. Here too, then, the increase in sexual excitement is indirectly felt. It is interesting to find that the desire to get rid of the unwished-for child is apparently much more closely connected with the number of births in the month than with the thought of how the child is to be provided for.

A reason advanced in favor of a milder sentence for infanticide was based on the assumption of a desperate frame of mind, a mixture of helplessness, shame, remorse, pain, and worry

<sup>1</sup> *Aschaffenburg*, "Zur Psychologie der Sittlichkeitsverbrecher" (MSchr-KrimPsych., II, 399).

about the future. The figures of the statistics show that the immediate care, at least, has no great influence; otherwise, in the times of need, that is, in the winter months, in which, in addition to all else, there is frequently loss of employment, there would be a greater proportion of infanticides. Instead of this, the number stands in the most direct relation to the number of births, so that one is almost tempted to say: among the same number of mothers of illegitimate children there is always approximately the same number who forcibly rid themselves of their children.

A number of other offenses show a curve similar to that of the sexual crimes: simple assault and battery (134), aggravated assault and battery (133), coercion and threats (132), insult (122), resisting officers (117), breach of the peace (110). All exceed the monthly average of 100, some of them considerably, as the figures in parentheses show. The curve rises steadily till the highest point is reached, in August, then follows a rapid descent, and the minimum is touched in December or January. The months from November till April are, without exception, below the average. The similarity of all these curves (compare Plate I), which follow the course of the curve indicating sexual crimes, though about two months later, is so striking that we are compelled to assume that the same causes underlie them all, though the legal classification of these crimes is quite different, owing to the multifariousness of the legal rights that are infringed. The manner of commission, brutal violence and revolt against authority, is common to them all.

Their course follows that of the mean temperature. Hence it would be daring to exclude altogether the influence of external warmth as a cause of the movements of these crimes; but I am more inclined to believe in the indirect effect of the rise in temperature. In summer it facilitates intercourse

with the outside world, increases and enlarges the points of social contact. The danger of conflicts is thus also augmented. Incomes are increased, expenses reduced, and opportunities to spend money in summer are not lacking. The presentation of a new flag, the opening of a new club-house, the unveiling of a monument, the anniversary of a foundation, birthdays and family anniversaries, harvest and church festivals, and other occasions are celebrated. Each of these means alcoholic excesses, a danger that, in any case, the summer heat entails. The part that drinking plays precisely in the above-mentioned crimes will have to be fully dealt with later. It must suffice here to point out the connection between the increase in brutal crimes and summer festivities.

Offenses against property present an entirely different aspect, malicious mischief alone forming an exception. The latter in its origin is related to assault and battery, and its course is consequently similar to the latter, although the differences between summer and winter are somewhat less pronounced. Theft and fraud, on the contrary, never reach the daily average of 100 from March to September. But, from then on, there is a rapid increase in their frequency, which continues through the whole winter (Plate II). The explanation of this phenomenon is much less difficult to find than in the case of the sexual crimes.

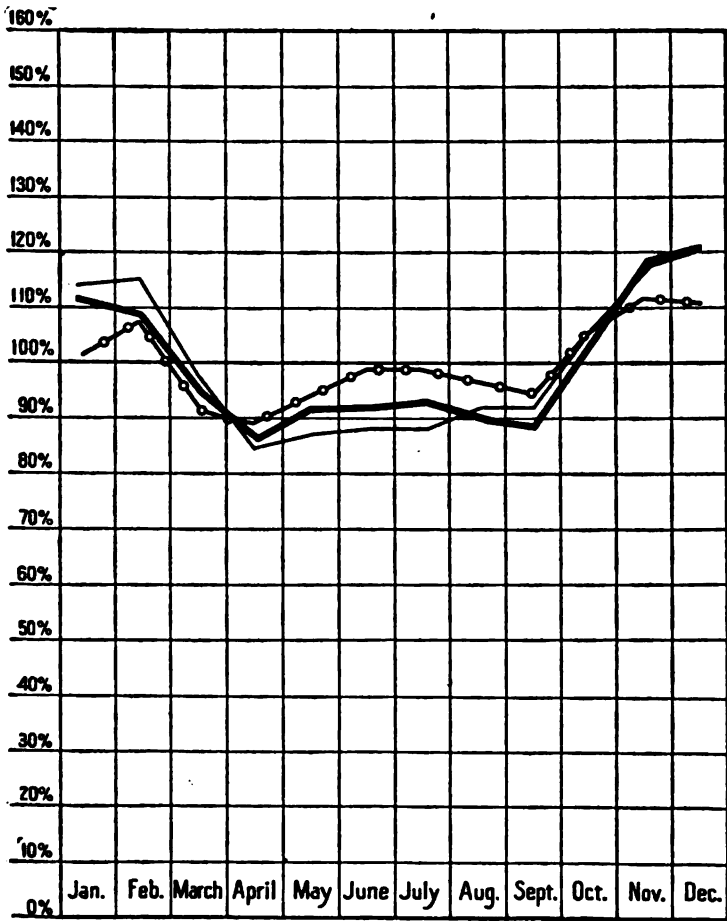
With the coming of spring the opportunity for employment increases, and the expenses of heat, light, and warm clothing are reduced, indeed, some of them cease entirely. In fact, it is possible temporarily to dispense with the shelter that is absolutely essential in winter. The pressure of the cold months is relieved. Those who do not want to work, and among them are many who in winter would encroach upon others' property, can manage to exist as tramps on the country roads and thus disappear, if not from the criminal courts,

## PLATE II

CRIME AND SEASON IN GERMANY. 1883-1892.

("Statistics of the German Empire," N. F. LXXXIII, II, pp. 82, 83.)

- Larceny (also when repeated). §§ 242, 244.  
 —○— Grand larceny (also when repeated). §§ 243, 244.  
 — Fraud (also when repeated). §§ 263-265.



at least from the annals of the government criminal statistics.

The menace to property does not begin again until winter. The darkness of the nights in the winter season have undoubtedly a certain significance in this connection, as being advantageous to burglary. Yet the chief reason for the increase must not be sought in them, as is proved by the fact that the fluctuation between summer and winter is greater in the case of small thefts than in that of large ones. With the struggle for daily bread and the hardships that hunger and cold impose upon the poor, their resistance against the temptation to steal is weakened.

The close connection between social misery and dishonesty can only be touched on here. I will not, however, omit to point out how statistics might contribute to our knowledge of whether, and to what extent, the increase of thefts in winter is connected with the economic situation. If the outward necessity is actually the cause, those that feel it most, that is the women and children, should also show the greatest differences during the different seasons. Thus separate statistics should be kept of them, and also of the cases of theft of food, which has not hitherto been done.

On the other hand, certain crimes that are now included might be omitted. Abandonment, murder, manslaughter, illegal imprisonment, robbery, and others, are much too rare offenses; the effect of chance on the times when they are committed may too easily lead to a false conclusion.

#### § 4. Race and Religion

General opinion would immediately answer in the affirmative the question whether different peoples show differences in criminal inclination. And yet this is something about which we really know very little. It must be admitted that in no

other field are the difficulties equally great, the most important being the incomparability of legislation. A classic example, and one that at the same time may serve as an instance of the possibility of making statistics support a theory, is Legoyt's<sup>1</sup> table, cited by von Oettingen. According to this, from 1850 to 1860 there was one convict to every 81.9 inhabitants in Austria, and one to every 81.8 in Spain; whereas in Prussia there was one to every 22.9, and in Hanover one to every 12.8. Thus, Prussia and Hanover, the Protestant Germanic states, would make a poor showing compared with the Catholic countries. But in Hanover and Prussia the numerous cases of infringement of the forest laws were included, which Legoyt wisely fails to state.

Such errors are avoidable, but not so those that are owing to direct variations in the laws. Sexual intercourse between men, for instance, is a punishable crime<sup>2</sup> in the Slavic and Germanic countries with the exception of Holland and, since recently, of Norway, while in the Latin countries, on the contrary, it is so only under certain conditions; criminal abortion is punished by an extreme penalty in some countries, in others it is judged most mildly; some nations regard even the attempt as punishable, others only the accomplished crime.<sup>3</sup>

To this difficulty, which lies in the definitions of the offenses, are added the differences in the prosecution of crime. Bodio<sup>4</sup> points out that in England 52 of every 100 persons accused of homicide are convicted, and 57 in Scotland, as

<sup>1</sup> *von Oettingen*, "Die Moralstatistik in ihrer Bedeutung für die Sozialethik." 3d ed., Erlangen, 1882, p. 455.

<sup>2</sup> *Wachenfeld*, "Homosexualität und Strafgesetz," Leipzig, Dieterichsche Verlagsbuch, 1901, p. 59.

<sup>3</sup> *Levin und Breuning*, *loc. cit.* p. 85.

<sup>4</sup> *Bodio*, "Gli omicidii in alcuni stati d'Europa" (Bulletin de l'institut internationale de statistique, IV, p. 206).



against 92 in Germany. This difference is explained by the fact that in Great Britain the verdict of manslaughter must be unanimous, which is not the case in Germany. In a comparative table Garofalo<sup>1</sup> shows that Austria has a higher criminality in aggravated assault and battery cases than Italy, and that, as regards theft, Germany exceeds his native land by more than 250%. Assuming the correctness of these figures, one is still justified in asking whether the better organization of the police and the courts, perhaps also the greater reliability of the statistics, may not explain this phenomenon, rather than the assumption of more brutality in Austria and less honesty in Germany.

Lombroso says:<sup>2</sup> "In our civilized world it is much easier and less uncertain (than among savage peoples) to prove that ethnology influences criminality." This is certainly not the case. Apart from the fact that, as regards the term "race," we have not yet come to conclusive results, and further, that we no longer find unmixed races,<sup>3</sup> the economic conditions in the different countries vary to such an extent that it is almost impossible to determine what part difference of race plays in criminality.

This is not to be understood as meaning that racial peculiarities are without psychological significance; deep psychological study is not necessary to the recognition of the differences between the easily excited Italians and the deliberate Northern Europeans, between the calm, somewhat phlegmatic, inhabitants of Lower Germany and the merry, boisterous people of the Palatinate. Also in statistics, though in other spheres than that of criminology, such differences

<sup>1</sup> Garofalo, "La criminologie," Paris, Felix Alcan, 1895, p. 440.

<sup>2</sup> Lombroso, "Die Ursachen und Bekämpfung des Verbrechens," Berlin, 1902.

<sup>3</sup> Compare *Petersilie's* race investigation, "Untersuchungen über die Kriminalität in der Provinz Sachsen," 1804, p. 69.

are traceable. From this point of view a deviation is not without value.

A glance at the frequency of illegitimate births in the countries of Europe shows quite peculiar differences.

TABLE V

## ILLEGITIMATE BIRTHS IN EUROPE

(After Bodio: "Movimento della popolazione," Bulletin de l'institut international de statistique, Rom., 1897, X, p. 118.)

COUNTRIES	YEAR	% OF THE BIRTHS
Austria . . . . .	1894	14.73
Sweden . . . . .	1894	10.62
Denmark . . . . .	1894	9.50
Hungary . . . . .	1894	9.35
Germany . . . . .	1894	9.26
Belgium . . . . .	1894	8.99
France . . . . .	1894	8.94
Scotland . . . . .	1894	7.29
Norway . . . . .	1894	7.17
Italy . . . . .	1894	6.77
Finland . . . . .	1894	6.39
Roumania . . . . .	1892	6.06
Switzerland . . . . .	1894	4.70
England . . . . .	1894	4.31
Holland . . . . .	1894	3.12
Ireland . . . . .	1894	2.73
Russia (excluding Poland) . . . . .	1893	2.66
Servia . . . . .	1894	1.07

States the statistics of which can scarcely be relied upon, like Servia with 1%, and Russia with 2.7%, illegitimate children, may well be omitted from our consideration. Of the others, Austria stands at the head with 14.7%, followed closely by Germany with 9.3%, while Switzerland has only 4.7%, England 4.3%, and Holland 3.1%, illegitimate births.

Separate provinces in the same country differ from one another even more decidedly. In Belgium the number of

illegitimate births varies between 2.6% in Limburg and 14.6% in Brabant. In Germany the figures have remained about the same for many years (1881-1890 9.3%, 1891-1900 9.1%). In 1900 Berlin showed the highest figures, 14.9%; this is partly due to the lying-in hospitals that exist there, as in all the larger cities and university towns. Bavaria, on the right of the Rhine, with 14.3%, is not far behind the capital; it must be admitted that in Bavaria marriage is made somewhat difficult by legislation, yet this cannot be the chief cause, as the Palatinate has only 6.2% of illegitimate births. The minimum number, 2.7%, is found in Westphalia.

Most striking of all are the differences in Austria. According to Szarlardi,<sup>1</sup> in Istria, of 100 children, 2.06% are of illegitimate origin, but in Karinthia 44.16%! Moreover, in the territories in which the number of illegitimate births is already low, it seems to be growing lower still, whereas the high percentage in Karinthia, Styria, Lower and Upper Austria, continues to increase.

Similar variations among different peoples and in different sections are also found in the statistics of suicide (Table VI).

According to von Mayr,<sup>2</sup> Monaco (with 301 per million inhabitants) stands, for obvious reasons, at the head of those countries that are especially menaced by suicide; then follows, at no great distance, Denmark with 255 cases, while Italy has only 49, Russia 32, Spain 24, and Bosnia with Herzegovina only 6. Morselli's<sup>3</sup> investigations show that the Germanic race is especially inclined to suicide and, of its sub-divisions, particularly the Northern Germans, while the Slavs and the Western Latin peoples (Spaniards, Central and Southern Italians) show but a slight tendency in that direction. The

<sup>1</sup> Szarlardi, "Der gegenwärtige Stand des Findelwesens in Europa," 1896.

<sup>2</sup> G. von Mayr, "Der Selbstmord" (Allg. statist. Archiv, 1897, p. 720).

<sup>3</sup> Morselli, *loc. cit.*

differences within the same country are also most characteristic. From 1896 to 1900, in Coburg-Gotha 420 persons per million inhabitants killed themselves, in Prussia 1891 to 1900, 319 in Schleswig-Holstein, 307 in Saxony, while the average for the whole of Germany was only 209; Westphalia and Posen showed the lowest figures, 105 and 91.

TABLE VI

## SUICIDES IN THE COUNTRIES OF EUROPE

(After von Mayr: "Der Selbstmord" Allg. statist. Archiv, 1896, p. 722.)

Number of suicides per 1,000,000 inhabitants.

COUNTRIES	1891-1900
Monaco . . . . .	301
Denmark . . . . .	255
Switzerland . . . . .	227
Germany . . . . .	209
France . . . . .	207
Austria . . . . .	161
Belgium . . . . .	114
Sweden . . . . .	107
Hungary, excl. Croatia and Slavonia	96
England and Wales . . . . .	77
Norway . . . . .	68
Scotland . . . . .	55
The Netherlands . . . . .	55
Croatia-Slavonia . . . . .	55
Lichtenstein . . . . .	53
Italy . . . . .	49
Roumania . . . . .	41
Finland . . . . .	39
Servia . . . . .	38
Russia . . . . .	32
Luxemburg . . . . .	28
Spain . . . . .	24
Ireland . . . . .	23
Bosnia and Herzegovina . . . . .	6

Not for a moment would I seek to explain these peculiar variations in the illegitimate births and suicides by racial differences alone. Religious and economic reasons are also

of equal importance with legislative ones, as Sweden proves. But, without forcing the facts, we cannot exclude the influence of racial characteristics altogether. This is not the place to trace it out in detail, as it would merely serve to show that ethnological differences are of psychological importance. At first sight the Catholic countries seem to make a better showing than the Protestant ones, but, although the priest's advice may aid many a Catholic in suppressing his thoughts of suicide, religion is nevertheless not determinative, still less is it a "measure of the culture and moral strength of a people"; for, as Gaupp<sup>1</sup> rightly emphasizes, the high suicide figures of France, compared with the low ones of England, show that the causes are far more complicated.

I must forego the enticing task of comparing in a similar way the criminality of the different countries, owing to the technical difficulties of which I have spoken. At present the necessary statistical basis is lacking to such an extent that it is scarcely possible to get beyond surmises. The attempt may, however, be made to contrast the different sections of the same country. Here too, however, we find certain limitations. In order to find the racial peculiarities, we should be obliged to inquire the birthplace of the perpetrator of every crime, and even that knowledge would not prove to what race he belonged. Statistics as a rule take into consideration only the place where the crime is committed, and, as I believe, rightly. First, because, as the criminal statistics of the German Empire have proved:<sup>2</sup> "the place where the crime is committed and the place of residence are the same, except in an insignificant fraction of the crimes committed"; and then, because the social causes are more important than the individual ones.

The importance of considering separately the place where

<sup>1</sup> Gaupp, "Über den Selbstmord," Munich, 1910.

<sup>2</sup> N. F. CXXI, II, p. 26.

the crime was committed and the birthplace of the criminal must, however, certainly not be undervalued; in some cases such a separation may serve to explain certain striking phenomena. After making such an investigation, Joly<sup>1</sup> found no change in the twenty departments that were criminally best and the twenty that were criminally worst in France; the order of rank remained the same, whether he made the birthplace or the place where the crime was committed the basis of his classification. Corsica, however, showed the highest number within the country, whereas the Corsicans living away from the island occupied only the sixty-fifth place. From this, Joly concluded that the social milieu of Corsica, and not the racial characteristics of the Corsicans themselves, was the cause of the greater inclination towards crime on the island.

With this view I cannot agree. While property is seldom endangered in Corsica, and then generally by foreigners, the principal crime of the Corsicans is murder, above all from motives of revenge. For every murder committed in France (calculated according to the present population) there are 11 in Corsica. In spite of all the efforts of the French government, the blood feud has not quite died out in Corsica, and at the time of Joly's investigations it was in a flourishing state. The Corsican who is living away from his home and from family quarrels lacks this powerful incentive to murder. But in the country itself the effect of the vendetta is still that of a folk-custom. And such customs, especially when they appear in so peculiar a way and are so deeply rooted, have for their deepest source racial characteristics.

This view is borne out by the varying distribution of the vendetta in Corsica itself. In some of the districts where it centres the necessity of defending oneself against attack, or

<sup>1</sup> Joly, "*La France criminelle*," Paris, Cerf, 1889.

of being able to escape into the woods, has actually determined the type of house architecture there. Some of the houses in Sartena, particularly in Bonifacio, resemble little forts, as I have had occasion to see myself. On the other hand, the east coast of the island, where the population is mixed with Italian immigrants, and Calvi on the west coast, which was populated by the Greeks, have remained free from the custom of blood feuds.

A very instructive work is that of Niceforo<sup>1</sup> on the criminality of Sardinia. It may also serve as a model for further investigations, for the author made a special territory (in which the population received little increase from outside) the subject of his research, and examined on the spot the elements which composed the people, and studied their life and customs. Sardinia has a population that is extremely disposed to crime. Murder and manslaughter, for instance, are fourteen times more frequent there than in the best province of Italy, Lombardy. More important still, however, are the characteristic differences of the separate smaller districts on the island. In two adjoining districts the number of cases of robbery and extortion is absolutely different; in Nuoro there are 67.45 such crimes per million inhabitants; in Sassari, 11.92; whereas in Venice there are only 3.13. Niceforo positively establishes the existence of a "zona delinquente" on the island. The population of this criminal territory is descended from the Mediterranean race of Sergi, which at the same time has its home in Asia Minor, Northern Africa, Spain, and Southern Italy, while in the rest of Sardinia the Celtic race predominates. Assuming the statements to be correct — and I must emphasize that the work impresses me as reliable — we should have here a clear proof of the importance of descent.

<sup>1</sup> Niceforo, "La delinquenza in Sardegna," Palermo, 1897.

Beurle<sup>1</sup> has collected and classified some interesting figures from the Austrian criminal statistics. In ten districts of the circuit court, Brux with 94%, three of them with from 82-91%, German population, there were 475 cases of theft per hundred thousand inhabitants; in the district of Laun, with 97% Czechs, there were 1030. In the Budweis circuit there are six districts where from 87 to 99% of the inhabitants are Germans, in the other districts not more than 52%, in some less than 10%, are Germans. In the German districts there were 524 cases of theft, as against 951 in the others. The same thing is shown in Table VII.

TABLE VII

1870-1888 PER 100,000 PERSONS OF PUNISH- ABLE AGE THERE WERE	ALL CRIMES	THEFT	AGGRAV- ATED AS- SAULT AND BATTERY	OTHER CRIMES	1888 THEFT	1888 ASSAULT AND BATTERY
(a) In districts chiefly German .	904	114	19	71	518	219
(b) In other districts	224	129	34	61	609	568

Pleasing as is the showing of the German population compared with the Slavic, it would yet be a mistake to draw far-reaching conclusions from it. Herz,<sup>2</sup> too, found, in the different states of Austria, fewer cases of theft in the German parts than in those where Germans are in the minority; and the same phenomenon appears in the figures that Kurella<sup>3</sup> has cited, according to which the Baltic Provinces are favorably distinguished from the Russian ones. Some of the figures used, however, embrace too short a period of time; moreover,

<sup>1</sup> Beurle, "Einige Ergebnisse der österreichischen Kriminalstatistik" (ZStW. VIII, 325).

<sup>2</sup> Herz, "Die Kriminalität in den österreichischen Kronländern" (MSchr. KrimPsych. I, 551).

<sup>3</sup> Kurella, "Naturgeschichte des Verbrechens," Stuttgart, Ferdinand Enke, 1893, p. 157.



educational and economic influences must be considered which, perhaps, would sooner lead to an understanding of the phenomenon than does knowledge of the difference in race.

Our interest centres, of course, mainly on Germany itself. The reliability of the statistical proofs, on the one hand, and our accurate knowledge of the people's mode of life and of the economic and social situation, on the other, give us the right to examine our home conditions with a view to ascertaining whether, in our country, racial descent is of any significance. It is to be regretted that only in the case of a few crimes has the statistical department ascertained the place of the deed, and then brought the figures into relation with the population living in that particular district. This material, though limited, is valuable for comparison, the more so as it embraces fully fifteen years. A period of this length excludes the danger of chance and temporary influences on criminality. Such a temporary increase in the number of convictions in a district took place, for instance, during the construction of the North-east Canal, owing to the large number of laborers that were brought into a small and usually quiet section. Such errors can be avoided only by collecting statistics covering longer periods of time.

The results of the calculations mentioned are given in volume 126 of the "Statistik des Deutschen Reiches," in large tables and five maps. From the tables I reproduce in Table VIII the figures for the provinces and government districts, or circuits only, omitting the small jurisdictions. This involves the loss of many important details, but it was essential first to establish the main facts.<sup>1</sup>

<sup>1</sup> Recently several monographs have appeared dealing with the criminality of small districts: *Weidemann*, "Die Ursachen der Kriminalität im Herzogtum Sachsen-Meiningen"; *Blau*, "Kriminalstatistische Untersuchung der Kreise Marienwerder und Thorn"; *Petersilie*, "Untersuchungen über die Kriminalität in der Provinz Sachsen." Of these works, the last mentioned has

TABLE VIII

PLACE OF THE CRIMES COMMITTED IN GERMANY FROM 1883 TO 1902  
Average number during 1883-1902, per 100,000 civilians of punishable age.

PLACE	ALL CRIMES AGAINST NATIONAL LAWS	RESIST- ING OFFICERS, ETC.	FELONY- OUS ASSAULT AND BATTERY	THEFT	FRAUD	AGGRAVATED ASSAULT AND BATTERY
Gov. Dist. Königsberg . . .	1526	51	1.84	325	36	245
" " Gumbinnen . . .	1746	35	2.22	419	43	243
" " Danzig . . .	1541	77	2.92	346	33	237
" " Marienwerder . . .	1522	42	2.59	393	32	301
City of Berlin . . . . .	1406	47	0.53	249	69	112
Gov. Dist. Potsdam . . .	1127	47	0.94	202	39	167
" " Frankfurt . . .	957	33	1.34	193	24	144
" " Stettin . . .	1214	49	2.16	199	22	213
" " Köslin . . .	938	25	2.63	179	23	209
" " Stralsund . . .	867	26	0.96	170	29	133
" " Posen . . .	1424	37	1.97	334	31	273
" " Bromberg . . .	1842	46	3.32	464	36	353
" " Breslau . . .	1312	59	0.97	243	54	173
" " Liegnitz . . .	871	23	0.74	139	49	86
" " Oppeln . . .	1360	72	1.75	317	46	365
" " Magdeburg . . .	1130	43	1.22	183	43	179
" " Merseburg . . .	1054	31	0.73	206	44	142
" " Erfurt . . .	946	22	0.73	167	47	119
" " Schleswig . . .	782	54	0.31	133	25	91
" " Hanover . . .	1096	36	1.03	168	59	154
" " Hildesheim . . .	874	21	0.54	172	46	136
" " Lüneburg . . .	847	22	1.11	147	42	129
" " Stade . . .	848	23	0.92	126	44	152
" " Osnabrück . . .	549	16	1.19	81	24	113
" " Aurich . . .	699	19	1.63	121	36	226
" " Münster . . .	671	33	1.73	95	24	147
" " Minden . . .	514	13	1.44	79	22	99
" " Arnberg . . .	971	33	3.15	133	32	233
" " Cassel . . .	301	25	1.12	146	29	136
" " Wiesbaden . . .	923	52	1.19	149	46	146
" " Coblenz . . .	699	29	1.36	99	27	154
" " Düsseldorf . . .	917	40	2.22	139	33	189
" " Cologne . . .	1003	60	1.59	137	39	199
" " Trier . . .	311	23	1.77	116	26	224
" " Aachen . . .	713	36	1.01	93	26	146
" " Sigmaringen . . .	539	22	0.42	83	25	115
Prussia . . . . .	1111	109	1.56	219	39	186
Gov. Dist. Upper Bavaria . . .	1323	30	3.33	244	109	353
" " Lower " . . .	1464	32	6.23	232	72	441
" " The Palatinate . . .	1637	36	2.17	197	63	517
" " Upper " . . .	1253	27	3.52	213	64	331
" " Upper Franconia . . .	1164	30	2.25	189	51	398
" " Central " . . .	1396	27	2.25	221	31	315
" " Lower " . . .	1104	31	1.25	164	57	261
" " Swabia . . .	1113	23	1.93	135	39	226
Bavaria . . . . .	1389	33	2.92	209	77	349
Circuit Dresden . . . . .	966	63	0.3	224	62	66
" " Leipzig . . . . .	976	62	0.32	243	53	73
" " Zwickau . . . . .	921	59	0.45	179	46	109
" " Bautzen . . . . .	642	39	0.24	163	41	67
Saxony . . . . .	919	53	0.35	205	53	82

TABLE VIII—*Continued*

PLACE	ALL CRIMES AGAINST NATIONAL LAWS	RESIST- ING OFFICERS, ETC.	FELONY- OUS ASSAULT AND BATTERY	THEFT	FRAUD	AGGRAVATED ASSAULT AND BATTERY
Neckar Circuit . . . . .	1021	52	1.71	163	52	183
Schwarzwald Circuit . . .	945	41	1.86	124	47	223
Salzt Circuit . . . . .	891	28	1.44	151	52	133
Danube Circuit . . . . .	994	42	1.41	152	71	146
Württemberg . . . . .	948	43	1.61	179	56	175
District Constance . . .	747	16	1.38	132	55	133
" Freiburg . . . . .	832	25	1.59	146	55	176
" Karlsruhe . . . . .	1014	26	1.86	173	59	256
" Mannheim . . . . .	1211	37	1.88	187	66	316
Baden . . . . .	973	29	1.72	166	59	229
Prov. Starkenburg . . .	921	27	1.46	123	37	267
" Upper Hesse . . . .	769	16	1.22	107	31	169
" Rheinhessen . . . .	1067	27	1.61	151	61	269
Hesse . . . . .	869	24	1.44	118	45	220
Mecklenburg-Schwerin . .	823	26	1.01	169	40	142
Saxe-Weimar . . . . .	841	31	0.92	216	61	77
Mecklenburg-Strelitz . .	834	25	1.17	194	27	129
Dukedom of Oldenburg . .	753	11	1.77	131	48	133
Principality of Lübeck . .	1258	24	1.41	250	67	183
Principality of Birkenfeld .	789	29	1.22	140	29	168
Oldenburg . . . . .	806	15	1.66	144	50	137
Brunswick . . . . .	1059	23	0.78	211	51	196
Saxe-Meiningen . . . . .	1174	28	1.35	189	48	191
Saxe-Altenburg . . . . .	880	17	0.56	233	53	88
Saxe-Coburg-Gotha . . .	870	27	1.21	169	44	143
Anhalt . . . . .	1126	29	1.33	217	45	165
Schwarzburg-Sonders- hausen . . . . .	1238	29	0.47	340	56	152
Schwarzburg-Rudolstadt .	1445	51	1.06	352	75	215
Waldeck . . . . .	439	11	0.89	97	26	491
Reuss Older Line . . . .	901	44	0.43	221	59	114
Reuss Younger Line . . .	1018	32	0.50	267	80	93
Schaumburg-Lippe . . .	419	13	2.02	72	27	62
Lippe . . . . .	568	13	0.46	135	41	66
Lübeck . . . . .	991	53	1.39	206	56	95
Bremen . . . . .	1732	73	0.91	297	113	227
Hamburg . . . . .	1459	99	0.80	265	77	104
Dist. Lower Alsace . . .	892	23	1.47	113	23	233
" Upper Alsace . . . .	899	29	1.94	134	32	233
" Lorraine . . . . .	751	22	1.25	105	35	176
Alsace Lorraine . . . . .	816	22	1.54	117	31	215
German Empire . . . . .	1104	41	1.58	201	47	196

From the "Statistik des Deutschen Reiches," Vol. 155, III.

A glance at the maps, which I did not think it necessary to reproduce, shows, first of all, that the whole east of Germany, as well as Upper and Lower Bavaria and the Palatinate, has a large number of convictions. While in the whole of Germany there were 1104 convicted persons to every 100,000 persons of punishable age, the number of such convicts in the government districts was: Oppeln 1860, Bromberg 1842, Gumbinnen 1746, Bremen 1732, the Palatinate 1657, Danzig 1541, Upper Bavaria 1528, Königsberg 1526, Marienwerder 1522, Lower Bavaria 1484, Posen 1424, and Mannheim 1211. On the other hand, Schaumburg-Lippe had only 419, and Waldeck 439 convictions. Waldeck offers an excellent opportunity for comparison with a section containing approximately the same number of inhabitants. In 1890 Waldeck had a population of 38,986, Pirmasens 38,327. In Waldeck there were annually 172 convictions, while in Pirmasens there were 885!

A deeper insight into the causes of these differences than can be obtained from a consideration of the criminality as a whole is afforded by an examination of the separate crimes. Of these, four have been chosen, and their statistics given: resistance to officers, aggravated assault and battery, theft, and fraud. Two of these crimes, theft and aggravated assault and battery, are characteristic of the general criminal physiognomy of a district, simply because they are much commoner than any others. Nearly half of all convictions are for these two offenses.

During fifteen years of observation, among 100,000 punishable persons, aggravated assault and battery led to con-

best overcome the difficulties of the methodology spoken of by *Dochow* "Über Kriminalstatistische Einzeluntersuchungen" (MSchrKrimPsych. I, 643). Yet we cannot expect really valuable results until a few more similar investigations shall make it possible to compare the practicability of the method and the validity of the conclusions.

viction 196 times. In comparing this crime with the whole criminality, we are at once struck by the equality with which it is distributed, though, indeed, Bavaria and the Palatinate appear to be somewhat more heavily burdened in this respect. Its centre is the Palatinate with 517 convictions, then follows Lower Bavaria with 441, Bromberg with 358, Mannheim with 316. The district of Dresden, on the other hand, shows only 66, and Schaumburg-Lippe 62. Here, too, Waldeck stands in strong contrast to Pirmasens, which is at the very top of the list.

Thus we see that aggravated assault and battery is concentrated at three points: in Bromberg, in the Palatinate, and in Southeastern Bavaria. Round these three centres are grouped the neighboring districts, scarcely behind them in this respect. The explanation of this geographical distribution immediately suggests itself; the three centres of this brutal crime are also the three centres of alcoholic indulgence in its various forms: in the east, spirits, in Bavaria, beer, and in the Palatinate, wine. This is undoubtedly the explanation of the geographical distribution.

The connection between aggravated assault and battery and alcoholic indulgence is important enough to demand detailed treatment. Let me say at the outset that the dangerousness of the different alcoholic drinks does not correspond to the generally accepted opinion. If we might determine the degree of seriousness from the number of the crimes, the sequence would be: wine, beer, spirits. Wlassak,<sup>1</sup> however, in his investigation of the question in Moravian-Ostrau, found another order: beer, wine, spirits; which more nearly corresponds to the quantity of alcohol contained in the different beverages. In any case, we can certainly agree with Földes<sup>2</sup>

<sup>1</sup> *Wlassak*, "Der Alkoholismus im Gebiete von Mährisch-Ostrau." Bericht auf dem VIII. Internationalen Kongress gegen den Alkoholismus.

<sup>2</sup> *Földes*, "Einige Ergebnisse der neueren Kriminalstatistik" (ZStW. XI. 535).

in thinking that the kind of beverage is unimportant, as compared with the efficacy of the alcohol it contains. On the occasion of a lecture that I gave in this connection, my statements were met with the argument that just the centre of aggravated assault and battery, Pirmasens, refuted my view, little wine being consumed there owing to the poverty of the inhabitants. On making inquiries, I found this to be the case, but learned at the same time that the consumption of spirits in Pirmasens is excessive. In the districts of Mannheim and Heidelberg, with which I am much more familiar, I can assert with assurance that alcohol in all its forms plays the principal, if not the only, part in the extremely numerous cases of aggravated assault and battery that occur there.

It is true that the inhabitants of the Palatinate have the reputation of being lively and irritable people, "screechers" ("Kreischer"), as they are popularly termed. Unfortunately, this excitability shows itself less in words than in deeds; in the number of insults they do not stand much above the average. Moreover, it is very possible that their boisterous demeanor is a result of the regular use of alcohol, like the "fighting lust" of the Upper Bavarians, which, under the influence of Sunday and holiday drinking bouts, has become a recognized folk-custom.

It is well known that, in spite of all the efforts that are made, we have not thoroughly succeeded in ascertaining accurately the amount of local alcohol consumption. It is quite conceivable that local conditions occasionally, and as an exception, weaken the usual effect of drinking on criminality, as, for instance, when a scattered population is less exposed to the danger of friction. In general, however, in our own country, we may safely assume a direct connection between the geographical distribution of aggravated assault and battery and the custom of indulgence in alcohol.

Such a connection also exists in the case of assaulting and resisting an officer, which, for the most part, takes place when a policeman arrests a drunkard. But, besides this, other causal factors must be taken into consideration. Boundary sections where the inhabitants speak different languages, industrial districts where there is keen, well-founded, or groundless dissatisfaction among the workmen, lockouts and strikes, large cities with their rowdies; all these have a permanent influence on the frequency of assaults and attacks on the representatives of government authority. This is especially true of all large ports, in which the refuse of all the countries of the world comes together. On shore the seamen, especially those of subordinate rank, such as stokers and trimmers, seek to make up to themselves for the harsh and implacable discipline they experience on board. In a few days, often in a few hours, the entire earnings of a voyage are transferred, and find their way into the hands of saloon-keepers and prostitutes, and intoxication among these rough crowds leads most easily to noisy street scenes. For this reason it is not surprising that in Altona, Hamburg's great amusement resort, the number of convictions, 19 per 10,000 inhabitants, so greatly exceeds the average for all Germany, 4.

Many a striking phenomenon, as, for instance, the frequency of this offense in the district of Potsdam (8.6) as against Berlin (4.9), is probably easier for the inhabitants of the place to explain than for those who have no knowledge of the local conditions. I believe that offenses against officers in particular are exclusively, or nearly exclusively, owing to external causes, among which I include the composition of the population that is due to occupation, not to descent.

In the distribution of petit and grand larceny, the east again strongly predominates. All the government districts on the Russian frontier exceed the average of the whole

of Germany (26.9 per 10,000 persons of punishable age), in some cases by a large number. At the head of the government districts stand Bromberg with 62.4, Gumbinnen with 56.4, Marienwerder with 51.6, followed, between 50 and 40, by Danzig, Posen, and Oppeln; outside of the Prussian domains, more than forty thefts occur in Bremen (41.6), Schwarzburg-Sondershausen (46), and Schwarzburg-Rudolstadt (45.4) only. In smaller administrative districts even greater variation is noticeable; the district of Heinsberg (Rhine Province) with 4 stands contrasted to Johannisburg (East Prussia) with 102.8. Except for scattered interspersions, the west is relatively free from theft; the figures for whole provinces, as, for instance, Schleswig, Hanover, Westphalia, Hesse-Nassau, Rheinland, the part of Hesse that lies on the right of the Rhine, and Alsace and Lorraine, remain below 20. In the smaller districts, greater numbers always appear where industries are strongly developed. It may be that the tempting opportunity to take possession of raw material and finished products, as well as fuel, is responsible for this. That explanation, however, is not applicable to those wide sections in the east that are mainly agricultural in character. The majority of the day-laborers in the east live on a frightfully simple and monotonous diet, in miserable dwellings, and work for insignificant wages. In the industrial districts of the east, too, wages, even in proportion to the lower cost of food there, are much lower than in the west. The economic misery is undoubtedly partly to blame for the numerous cases of theft in the east, though of course not entirely. The conscience of a rather unintelligent population, living under the poorest conditions, easily grows lax as regards the difference between mine and thine; and when once the sharp dividing line between these two is no longer respected, actual necessity is not needed as an incentive to steal. On the other hand, it cannot surprise



us that the prosperous Westphalians and Rhinelanders seldom lay hands on others' property—except in the large cities and industrial centres. This is not intended, however, to be an assertion that the influence of Slavic blood, which our statistical department makes partly responsible for the high degree of criminality in the east (Vol. CXLVI, II, 58), is without significance. But before such influence can be accepted as a fact, it must be proved by detailed investigations, and the same is true of von Rohden's<sup>1</sup> opinion, that the "aftermath of serfdom which prevented the development of the moral personality" is an important factor.

A remarkable contrast to this condition is presented by the geographical distribution of fraud. The whole of the east, which has been so heavily burdened with the crimes just discussed, — as well as the north and west, — shows a very small number of convictions for fraud, with the exception of the Hansa Towns and Berlin. They mount up, on the other hand, in Saxony, Thüringen, the Palatinate, Baden, Württemberg, and Bavaria. Bremen with 12.3, has more than double the average for all Germany (5.1), and Mannheim (11.3) and Upper Bavaria (11.3) are not far behind it. The explanation of this phenomenon is very difficult, and becomes even more so when we go back to the small districts. The maximum (35.4) is reached in the city circuit of Traunstein,<sup>2</sup> the minimum (0.63) in Lübeck (Westphalia).

Seuffert<sup>3</sup> has given a very important explanation in connection with Traunstein. He shows that, during the years

<sup>1</sup> *von Rohden*, "Von den sozialen Motiven des Verbrechens" (*Zeitschrift für Sozialwissenschaft*, VII, 523).

<sup>2</sup> On the map the district of Ulm (Württemberg) is given as having the maximum 16.3; but on page II, 57, Traunstein with 35.4 is given as having the highest number. This discrepancy is owing to the fact that on the map the city and the district are given as one.

<sup>3</sup> *Loc. cit.* p. 54.

from 1883 to 1887, it was thus heavily burdened (42.1), while its average from 1888 to 1892 was only 21.2. He learned that from 7000 to 8000 young workmen, especially Austrians, pass through Traunstein annually. In 1883 the practice of supplying them with food ("Naturalverpflegung") was established, but might only be made use of twice a year. In order to receive this aid oftener, many of the youths altered the dates on their papers. In most cases the offense was simply leaving a public-house without paying the bill. Seuffert assumes that a similar explanation applies to the other Upper Bavarian towns, and concludes: "A large percentage of the high figures for fraud in Southern Germany should be laid at the doors, not of the permanent, but of the fluctuating population."

Unfortunately I cannot agree with him in this effort to save the honor of the country. First, because the "falsification of journeymen's books and identification papers" is not punishable as fraud, but as an offense against § 363 of the Penal Code, and hence does not appear in the statistics. Secondly, because further observation has shown that the temporary improvement has not been maintained, and now, after a period of fifteen years, the number (35.4) still exceeds sevenfold the average of the Empire. Further, because the vicinity of Traunstein (district T), where the falsification of papers in order to obtain provisions from the town would be useless, still exceeds by ten the average of the whole country in convictions for fraud. In any case, a glance at the map shows us that the great predominance of fraud all over the south of Germany cannot be attributed to the fluctuating population.

Fraud, too, is influenced by economic conditions, as the heavy increase during the winter months proves. But the connection between the two is not as close as it is in the case

of larceny. Beurle succeeded in establishing the fact that, in general, 89% of all criminals are without any means whatever, of the thieves even 94%, while only 0.1% might be called prosperous. Fraud, however, is committed by 1.4% of well-to-do persons and by only 79% of persons without means.

I believe that two factors are at the root of the geographical distribution, the first being occupation. In the country, fraud is more difficult than in the city, and the temptation rarer than in business life. The second factor lies in the greater intelligence that the perpetration of a fraud requires. As a rule it needs much more intelligence, above all, more deliberation, to swindle a man than to steal his property. Herz<sup>1</sup> also holds this view, and believes that one of the causes of the preponderance of fraud cases in the German jurisdictions over those in the Slavic jurisdictions (4.7 : 25 to 10,000 inhabitants) is the higher degree of intelligence and education among the Germans.

Yet neither the crowding together of people in the city, and city occupations, nor greater intelligence alone, affords an adequate explanation of the frequency of fraud in the south and in Saxony and Thüringen. Otherwise the Rhine Provinces and Westphalia would show a greater number of convictions. Hence, everything compels us to see in this phenomenon a character trait of the population in those sections in which the crime predominates. This throws a peculiar light on the proverbial honesty of the Swabians. But, just in order to refute the correctness of this reproach, which of course applies to an even greater extent to Bremen, Upper Bavaria, and Mannheim, it would be desirable to extend the statistical examination during a number of years, so that it would also include the fact whether, in the case of fraud, the birthplace of the criminal, and the place where the crime

<sup>1</sup> *Loc. cit.* p. 557.

is committed, differ more frequently than in the case of other crimes. Further, consideration should be given to the doubt that Hans Gross<sup>1</sup> has expressed, as to whether fraud is to be regarded as a psychologically uniform offense at all.

The results of a geographical consideration are meager as far as differences of race are concerned. Only in the contrast between the frequency of theft and fraud in the east and south is it perhaps possible to see a sign of such differences; I purposely say "perhaps," for no absolutely certain proof is to be found in the material at hand. One thing, however, we may definitely assert, that the possibly existing race differences exert an insignificant influence, as compared with the powerful social factors, prosperity and folk-customs. From the fact that the east is strongly represented in the whole criminality of the country, we should not conclude that the state of morality there is low, but rather that the economic conditions are bad.

The negative result of the race investigation is highly pleasing to the criminologist. Race transformation goes on slowly for centuries and can scarcely be influenced from outside by artificial means; whereas we possess weapons enough against evil economic conditions and the abuse of alcohol.

Here we may well go on to the influence of religious denomination. Religion, as such, does indeed appear to be entirely without significance in the criminal statistics, for we merely ascertain to which of the existing denominations an individual belongs, but not whether his membership is more than a purely nominal one, not the degree of his religious belief, not the influence of religious teachings on his thought and actions. It might almost be affirmed that the commission of any serious crime is a proof that the perpetrator has lost his touch with his religion.

<sup>1</sup> *Loc. cit.* p. 371.

But, if we examine the statistics, we are confronted by differences of such magnitude that we are not justified in passing them over in silence. Especially is this true because, in the quarrels among the denominations, the kind and number of convictions are quoted to show the inferiority of the opposing sect.<sup>1</sup>

During the years 1892-1901, the average number of persons convicted per 100,000 civilians of the same faith was:

TABLE IX

1122 Evangelical Christians
1361 Catholic Christians
1030 Jews

The criminality of the Jews, with the exception of Group I in the statistics (crimes and offenses against the State, public order, and religion), is far below that of the Christians. Their predominance in Group I is mainly due to the large number of convictions among them for transgressing against the Lord's Day law.

If we regard the offenses separately, we find that, for every 100 cases of usury in which Christians are the offenders, there are 1300 such offenses committed by Jews in proportion to the number of members of every denomination. In considering this fact, two things must not be forgotten: first, that convictions for usury are very rare. During the period covered by the report, the average annual number of Jews convicted of this offense was 5. Such small figures easily lead our judgment

<sup>1</sup> An anonymous pamphlet ("Die konfessionelle Kriminalstatistik in Württemberg," Halle, Eugen Strien, 1886, with the motto, "By their fruits ye shall know them") contains the following sentence (p. 32): "In contrast to the complaints of the Protestants of decrease in church attendance, indifference, and lukewarmness, we see in the Catholic church in the last forty years an unequalled growth of church life and — unfavorable moral results."

astray. It is true that the small number is so constant that we cannot deny it every significance. Secondly, we must take into account the fact that usury is a specific offense of trade. From 1885 to 1889 60% of all the persons convicted of usury were engaged in trade and commercial pursuits. According to the last statistics of occupation, of the year 1895, among 100 Jews engaged in gainful occupations, 54.56 were engaged in commercial pursuits, as against 9.64 of the entire population; that is, nearly six times as many as the proportion of Jews in the population would lead us to expect. Hence, we should compare not the number of Jews and Christians that are convicted of usury, but the number of commercially occupied Jews and Christians. This results in a considerable decrease in the predominance of the former, though the Jews still remain in the majority. It would be a mistake to draw any far-reaching conclusion from these facts, if for no other reason than merely because most of the cases of usury do not come before the courts at all, so that the small number of convictions is entirely misleading.

The same considerations apply to all those crimes the nature of which makes their accomplishment almost impossible except by those engaged in commercial occupations in the widest sense, such as simple and fraudulent bankruptcy, and offenses against § 147 of the trade regulations. How necessary it is to take the occupation into account, is shown by a consideration of the kingdom of Saxony. In 1891, 14.9% of all the fraudulent bankruptcies, and 23% of all the convictions for usury, occurred in that realm, whereas the percentage corresponding to the number of inhabitants would have been 7.07. The explanation of this lies in the occupations predominating in Saxony; of 1000 gainfully employed persons in 1895, 122 were engaged in trade. It may be said in passing that the percentage of Jews in Saxony is only 0.27.

TABLE X<sup>1</sup>

CRIMES AND OFFENSES AGAINST NATIONAL LAWS (EXCEPT AVOIDANCE OF MILITARY SERVICE § 140 OF THE PENAL CODE)	CONVICTED PERSONS 1892-1901 PER 100,000 CIVILIANS OF THE SAME RELIGIOUS DENOMINATION		
	EVANGELICAL	CATHOLIC	JEWISH
1. All crimes and offenses against nat. laws	1122	1361	1030
2. Crimes and offenses against the State, public order, and religion . . . . .	169	164	234
3. Crimes and offenses against the person .	461	634	382
4. Crimes and offenses against property .	489	559	410
5. Resisting an officer, etc. . . . .	41.9	48.1	13.3
6. Breach of the peace . . . . .	55.1	59.7	32.5
7. Violating the Lord's Day regulations .	21.4	13.4	125.6
8. Perjury . . . . .	2.1	2.1	3.4
9. Rape . . . . .	11.1	13.0	9.4
10. Insult . . . . .	140.4	148.1	199.9
11. Aggravated assault and battery . . .	185.5	214.1	75.3
12. Petit larceny, also when repeated . .	218.6	254.1	80.0
13. Grand larceny, also when repeated . .	32.1	36.2	10.3
14. Embezzlement . . . . .	53.2	51.5	48.0
15. Receiving stolen goods . . . . .	19.84	23.47	16.49
16. Fraud . . . . .	46.3	51.8	94.2
17. Fraudulent bankruptcy . . . . .	0.41	0.27	3.2
18. Simple bankruptcy . . . . .	1.8	1.3	26.3
19. Malicious mischief . . . . .	42.7	56.1	11.3

The number of Jews convicted of dueling is striking—three and a half times greater than it should be. According to Cron,<sup>2</sup> 5.4% of the students at the universities in Baden, from 1889 to 1893, were Jews, while they constitute only 1.6% of the population. Hence, the number of them that are convicted of dueling is explained by the large percentage in the student body, and perhaps also by the greater frequency of serious conflicts to which their faith exposes them. All duels in which officers of the reserve are concerned are not included, as they are dealt with by court-martial. This also brings

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. LXIV, II, p. 35, and CXLVI, II, p. 60.

<sup>2</sup> Ludwig Cron, "Der Zugang der Badener zu den badischen Universitäten 1869-1893," J. D. Heidelberg, 1897.

about an artificial increase in the percentage of Jews as compared with that of Christians.

Occupation does not, however, explain the high number of sentences for insult, which is still more remarkable when we consider how little the Jews are inclined to intemperance, one of the commonest causes of this offense. How often the insult is only the reaction from former irritations cannot be determined, but, whereas, in regard to the other offenses mentioned, I believe that the influence of a race peculiarity is inadequately proved, in this instance it seems to me possible that a connection exists between the offense and racial descent. The vivacity that expresses itself in gesticulation, talkativeness, loud speech, and excitability is, as we know, much greater in the south than in the north; perhaps the large number of insults may be explained by the relationship with southern peoples, but of course this supposition, too, can hardly be proved.

The same view of the importance of occupation appears in our government criminal statistics: "The high number of convictions of Jews for a series of punishable offenses is closely related to their preference for commercial occupations.<sup>1</sup> But even if we take their occupation fully into consideration, in certain crimes, above all in simple and fraudulent bankruptcy, the number of convictions of Jews considerably exceeds that of Christians (1892-1901: 26.3:1.6 and 32:0.36 per 100,000 persons of the same faith). The unfavorable light thus thrown on the business conduct of many Jews is improved by the fact that the number of convicted Jews is constantly decreasing.

This is not true, however, in respect to a few other crimes and offenses, chief among which are fraud, suppression and forgery of public documents, adulteration of food. Here,

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. CXLVI, II, p. 59.



too, occupation may have a decisive influence, but, in any case, one thing cannot fail of recognition, that the offenses of which a larger number of Jews are convicted than their proportion to the total population would lead one to expect, belong to those crimes that are committed for personal, usually material, gain, and that the explanation is found partly, if not entirely, in the occupation of these people.

The Jews, as has been mentioned, are not to any extent habitual frequenters of public-houses, nor do they drink to excess. Whether this restraint is due to their descent or to the effect of the voluntary and involuntary social seclusion that they have undergone, may remain undecided. Certain it is that this factor has the most favorable influence possible in the prevention of crime. The number of Jews concerned in cases of aggravated assault and battery is only one-third of what might be expected, and, as this crime is almost exclusively the consequence of alcoholic excesses, the favorable result is but natural.

In general, members of small religious communities or of a scattered race that is surrounded by other races are less inclined to deviate from the straight way. This is, in part, the effect of the greater attention that is paid to the whole conduct of life. Every crime committed by an individual in a singularly exposed circle or community is more striking and immediately leads to generalization. We all know, for instance, how the immoral offenses of a Catholic priest, fraud committed by a nobleman, the brutality of an army officer, are seized on by all opposing parties, stripped of their character as being independent of occupation and descent, and are represented as typical.

This sharp criticism has its great advantages. In Prussia, for instance, between 1862 and 1864, 3.58% of the births among the Jews were illegitimate, among certain sects (Men-

nonites, etc.) 3.29%, as against 10% among the rest of the population. In Austria, according to Korösi, 3.2% illegitimate Jewish children were born, as against 37.89% Catholic children; in Vienna from 1874 to 1878 there were 11.8% Jewish, 23.1% Protestant, and 44.2% Catholic, illegitimate births. The figures in Russia were similarly divided: 3.06% in the Greek Church, 0.22% among the Jews, 0.16% among the Mohammedans.

This somewhat artificial raising of the moral plane is partly due to favorable external conditions; the closeness of union in such communities naturally leads to a much better developed system of mutual aid in poverty. This, together with the greater average prosperity of the Jews, explains the low percentage of thefts among them; in cases of petit larceny they are more than three-fourths, in cases of grand larceny about two-thirds, behind the Christians, and the same relative position may be observed in some other offenses against property.

Respect for the family and for the sacredness of marriage has a direct and noticeably favorable effect on criminality, as is shown by the fact that convictions for bigamy, for the abuse of a relationship of trust to commit an offense against chastity ("Unzucht unter Missbrauch eines Vertrauensverhältnisses"), infanticide, abandonment, never occur among these people, and that convictions for incest are extremely rare. In all the remaining crimes, low criminality, or its absence altogether, may be regarded as due to the advantageous economic condition that has already been discussed.

The same reasons, but probably strengthened by the fanatical religiousness which is generally so highly developed among sectarians, are responsible for the rarity of convictions in the group classified as "other Christians," in which the government statistics, oddly enough, have included, be-

sides the Mennonites, Baptists, etc., also the "Dissenters" ("Dissidenten"). In the latest compilation no special information about this group is given.

It is very difficult to explain the great predominance of the Catholics over the Protestants in crime (Table X). An average for ten years shows their relation to be 1361:1122; in the main groups the Protestants predominate only in Group I (169:164); among the more important of the subdivisions they are in the majority in embezzlement, 53.2:51.5, and in bankruptcy. In considering these wide variations, a connection between them and the geographical distribution immediately suggests itself. Von Scheel considers the question of religion superfluous, and explains the variations by the fact that in Northwestern and Central Germany, where the Protestant faith predominates, the inhabitants are of more phlegmatic temperament and, to some extent, more prosperous, while the Catholic sections embrace the uncultivated districts of Eastern Germany. In the most recently published government statistics<sup>1</sup> relating to religion, it is stated: "The fact that criminality among Catholics is greater is largely due to the preponderance of Catholicism in those districts of the Empire lying on its eastern border, which are partly inhabited by a Slavic population and are culturally not so highly developed, and where the greatest number of convictions occurs."

But this is not entirely correct. In the eastern provinces (Eastern Prussia, Posen, and Silesia), where the criminality is so high, there are about one and a half million Catholics, whereas in the cultivated provinces of the Rhine and Westphalia there are nearly two millions. In Eastern Prussia, in fact, only 13.5% of the inhabitants are Catholics. It would also be a mistake, without further research, to hold the Slavs

<sup>1</sup> "Statistik des Deutschen Reiches," CLXIV, II, p. 58.

in the east responsible, their inclination towards crime being as yet hardly established.

Those districts in which the religious denominations are mixed should afford us a better insight. The government criminal statistics<sup>1</sup> give us a comparison of 25 sections in which at least one-quarter of the population was either Evangelical or Catholic. Among these the criminality of the Evangelicals exceeded that of the Catholics, per 100,000 inhabitants of the same faith, by 5 in the Danube Circuit, 6 in Minden, 10 in Heidelberg, 30 in Osnobrück, 36 in Offenburg, and 86 in Karlsruhe, — six districts altogether, in which there were, on an average, 28 more convictions, with a total average for the whole of Germany of 1031.

On the other hand, in the following nineteen circuits with mixed populations the Catholics committed, on an average, 150 more crimes than their share: Schwarzwald Circuit (49), Mosbach (27), Arnsberg (36), Coblenz (37), Rheinhessen (59), Düsseldorf (88), Danzig (89), Marienwerder (100), the Palatinate (120), Jagst Circuit (122), Starkenburg (143), Lower Alsace (166), Breslau (184), Wiesbaden (184), Oberfranken (212), Mannheim (230), Lörrach (232), Bromberg (361), Posen (423).

The variation being as great as this, we cannot omit to search for the cause. Auricular confession is frequently held responsible, but it is a question whether there is any justification for this opinion. Persons of inferior mentality and confused minds may, indeed, consider that the performance of a penance imposed by the Church lessens their responsibility to the State. This view undoubtedly does exist, but it would scarcely be possible to calculate its frequency and significance. It need not be said that such a misunderstanding of an institution that is of so great importance in the Catholic Church is

<sup>1</sup> N. F. LXIV, II, 36.

not to be laid at its doors. I know several cases in which confession led to crimes being made good, either by the restoration of stolen property or by the criminal's giving himself up to justice. The frequency of such occurrences cannot be given in figures, but of one thing we may be certain, that confession in itself is much more calculated to repress than to further criminal tendencies.

Another fact, however, decidedly deserves consideration, that the material circumstances of Catholics in general are less prosperous than those of Protestants. I have no knowledge of any accurate investigation that proves this fact throughout Germany, but in a small portion of the Empire, in Baden, the whole question has been most carefully studied. Martin Offenbacher<sup>1</sup> has been able to prove that, with few exceptions, the Protestants in Baden fill the more remunerative positions in all occupations. In agriculture, for instance, in which more Catholics than Protestants are engaged, the lucrative branch of supplying good markets with milk, vegetables, and fruit is largely in the hands of the latter. In industrial pursuits, the majority of the more independent workmen are Protestants; for instance, the art-craftsmen, compositors, printers, and photographers. In 1895 the income tax per 1000 Catholics amounted to 589.800, per 1000 Protestants to 954.900, marks.

To generalize from the conditions in Baden for the whole of Germany is permissible to a certain extent, for it is known that the student bodies in Bavaria, Württemberg, and Prussia show the same phenomenon that is seen in Baden. Everywhere a relatively small number of Catholics is found in the "Realschulen" and "Realgymnasien," a somewhat larger number in the "Gymnasien" (students of theology), but

<sup>1</sup> *Martin Offenbacher*, "Konfession und soziale Schichtung," J. C. B. Mohr, Tübingen und Leipzig, 1900.

always a smaller proportion of Catholics than we should expect.

This fact, an enquiry into the cause of which does not lie within the limits of this work, assigns to the Catholics a lower place in the social and therefore, also, usually in the economic scale. With the close connection that exists between economic position and crime, this proportion brings with it the danger of coming into conflict with the law. Less importance should be attached, in my opinion, to the lack of higher education, for too little is known as yet of its influence on criminality.

I must be content to point to the possibility of a connection between the greater criminal inclination of the Catholics and their social condition; in view of the importance of the fact itself, further investigation of its causes is essential. It is certainly fitting, however, to emphasize that, the cause still being doubtful, we are not justified in using the higher or lower criminality of members of any faith as a weapon against them, or, worse still, like the anonymous writer mentioned on page 52, to assume that "criminal statistics show the intrinsic moral value of the various faiths in a really remarkable manner."

The government statistical report is right in closing its consideration of the connection between religion and crime with the following words:<sup>1</sup> "We cannot issue too strong a warning against the use of the data for or against this or that faith, to show that its effect on criminality is proved."

#### § 5. City and Country; Occupation

According to von Oettingen,<sup>2</sup> the relation of the urban to the rural population in Italy was 32:68, but in criminality they approach each other, and the relation is 43:57. Condi-

<sup>1</sup> "Statistik des Deutschen Reiches," LXIX, II, 37.

<sup>2</sup> *von Oettingen, loc. cit.* p. 499.

tions are similar in France, where the urban and rural inhabitants were responsible for approximately the same number of crimes; but the urban inhabitants constitute only about 30% of the whole population. In Germany, in the cities and districts with more than 20,000 inhabitants there are 134.2 delinquents per 100,000 adults; in the rural districts only 96.6. But it would be erroneous to conclude from this that morality and virtue are deeper rooted among the peasants than among the dwellers in cities. For good reasons the large city strongly attracts criminals and loafers, who find there a better field for their labors, companionship with congenial spirits, and more opportunity to keep themselves and their booty out of sight. The pleasures of the city are also enticing, and it is just these pleasures that offer themselves daily in all possible forms, chief among which are prostitution and alcohol, that are fraught with danger to the man of weak character. He succumbs much more easily in the complicated life of the city than under simple rural conditions, to the temptation to steal. If, in addition, he becomes intimate with reckless companions, or, worse, falls into the hands of old prison veterans, the first step in a career of crime is soon taken.

A summary of the years 1883-1893 in Germany <sup>1</sup> gives the following differences per 10,000 urban and rural inhabitants:

TABLE XI

PLACE	ALL CRIMES	RESIST- ING OFFI- CERS	AGGRA- VATED ASSAULT AND BATTERY	THEFT	FRAUD
Aggregate of 33 cities and districts with more than 20,000 inhabitants . . .	134.2	7.4	12.3	37.8	8.1
Remaining territory, chiefly rural, of the corresponding higher administra- tive districts . . . . .	96.6	3.2	16.7	27.3	3.8

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. LXXXVII, II, 23.

Offenses against property, especially fraud, predominate in the city; the numbers of procurers, and of workmen without steady employment, whom I shall try to characterize more fully later, in short, the whole tribe that constantly lives with one foot on the threshold of the penitentiary, clearly appears in the frequency of resistance to the authority of the State. In the country, on the other hand, the drinking that goes on on Sunday ends in a brawl, in which knives play their part; hence the larger number of cases of aggravated assault and battery. But there is also great variation in this respect. In the part of Bavaria that lies on the right of the Rhine there are more cases of such assault and battery in the country districts, while in Rhineland the majority of such cases occur in the towns.<sup>1</sup>

In trying to find the reasons for these variations between the city and the country, we must proceed with great caution. Yvernes,<sup>2</sup> for instance, established the fact that 75% of all infanticides were committed in the country, and 60% of all criminal abortions in the city. But these are not criminal psychological differences that might be used in characterizing the population. They are merely differences in technique, if I may so express it. Unmarried pregnant girls in the city easily find an experienced friend or unscrupulous midwife to help them; the newspapers teem with advertisements offering "advice in confidential cases." The peasant girl resorts to the use of internal, and, generally, ineffective, doses, to procure abortion, but so seldom with success that such cases rarely reach the ears of the authorities. But if she makes away with the infant after it is born, she seldom escapes prosecution and conviction; in the city it is more convenient and less risky to let the "baby farmer" attend to the ghastly task.

<sup>1</sup> *Prinzling*, "Soziale Faktoren der Kriminalität" (ZStW. XXII, 150).

<sup>2</sup> Cited by *Földes* (ZStW. XI, 528).



The connection is not always so transparent. The variations found in different localities often cannot be explained till the occupation is taken into account. There is no doubt that the latter has considerable influence on the kind of offense committed. Apart from superficial connections between the two, a close relation is brought about by the fact that an individual's inclination and talents influence his choice of a profession. It requires a robust constitution to be a butcher than to be a tailor or waiter; the individual of inferior intelligence will never rise above the grade of the unskilled laborer. Still greater interest is claimed by the well-known fact that, among impersonators of women on the stage, among waiters and ladies' tailors, there are many men with perverted sexual instincts, who have doubtless been influenced in their choice of occupation by the abnormal suggestions connected with these kinds of employment. It is to be regretted that so far not much study has been devoted to the psychology of occupation. For this reason the government statistics do not enter a laborious, and at present vain, consideration of the different professions, but deal only with the large groups of occupations.

In Table XII the number of adults in each of these groups is given, and the share that each group has in criminality as a whole, as well as in certain of the more important crimes. The group that includes agriculture, forestry, hunting, and fishing is strongly represented in the crimes of arson, perjury, and aggravated assault and battery. The suspicion that in most cases of arson the motive is the desire to obtain the insurance is refuted by the statistics. Occasionally, it is true, a peasant whose circumstances have deteriorated resorts to this method of getting a fresh start, but, in comparison with other occupations, such cases are rare. Most cases of incendiarism are due to revenge on the part of employees, that is through farm laborers, dairy maids, etc. Anger at being

scolded gives the impulse, and the tempting quantities of hay, straw, and grain afford the favorable opportunity.

Only as regards perjury does the number of independent farmers who are convicted exceed that of the employees; all the other offenses are committed chiefly by the laborers and maids.

The commonest crime of the industrial population is the offering of resistance to an officer. Nearly half of all the convictions for this offense fall to the share of workmen in factories, mines, and the building trades, who constitute approximately one-sixth of the total population. The reason probably lies in the large number of youthful factory workers employed. The effect on these immature youths of independence and of the liberty to dispose of their weekly wages as they wish, is most unfavorable. In their self-conceit they look upon themselves, when they resist the subordinate representatives of the government, as heroes.

The immaturity of the workmen is also to blame for the fact that the industrial group is so largely represented in offenses against chastity; the saloon is responsible for the many cases of aggravated assault and battery.

The specific crime of the commercial class, which includes also hotel-keepers, is usury. To 100 adults of the total population there were 2.3 independent landlords, who were responsible for 59.8% of all the cases of usury. The prosperous condition of many tradesmen makes it easier for them to lend money than for men in other occupations; the figures would also perhaps justify the conclusion, that many a usurer merely uses trade as a blind in order to cover his dubious business.

The criminality of the fourth group is much below its proportion of the whole population; it includes, besides public employees and those in the service of the courts, the so-called independent professional men (physicians, teachers, lawyers,

TABLE XII

## PROFESSION AND CRIMINALITY

("Statistics of the German Empire," N. F. LXXXIX, II, p. 48.)

1890-1894 Of 100 Persons Convicted Whose Crimes Belonged to the Following Occupations	AGRICULTURE, FORESTRY, HUNTING AND FISHING			INDUSTRIES, MINING AND BUILDING TRADES			TRADE AND COMMERCE, IN- CLUDING HOTELS AND PUBLIC HOUSES			PUBLIC AND COMMUNAL SERVICES, EX- CEPT PRO- FESSIONAL PERSONS			DOMESTIC SERVANTS		WORKMEN, TRADE AND OCCU- PATIONS NOT GIVEN		WITHOUT OCCUPATION, AND OCCU- PATION NOT GIVEN	
	INDEPENDENT	ASSISTANTS	RELATIVES	INDEPENDENT	ASSISTANTS	RELATIVES	INDEPENDENT	ASSISTANTS	RELATIVES	INDEPENDENT	ASSISTANTS	RELATIVES	INDEPENDENT	ASSISTANTS	INDEPENDENT	RELATIVES	INDEPENDENT	RELATIVES
I. Persons convicted of any crime:	4.7	18.9	2.5	6.4	30.4	4.4	5.7	5.8	1.2	1.3	0.17	1.6	0.02	10.4	1.8	4.6	0.37	
II. Convicted of:																		
Resisting officer, etc. . . . .	2.9	11.9	0.99	5.2	46.3	1.4	2.8	7.2	0.39	0.96	0.07	0.80	0.008	15.8	0.54	2.2	0.11	
Perjury . . . . .	8.5	94.1	2.4	10.1	91.2	4.1	7.1	3.6	1.5	1.2	0.80	3.0	...	7.9	1.0	2.9	0.23	
Indecent assault and rape . . .	1.5	21.6	0.82	6.7	43.3	1.0	3.2	5.7	0.34	3.2	0.07	0.21	0.01	8.9	0.46	1.9	0.11	
Aggravated assault and battery	5.1	25.9	1.4	5.2	41.3	2.3	2.9	3.9	0.52	0.62	0.07	0.22	0.02	8.6	0.91	0.90	0.13	
Theft . . . . .	2.4	23.4	2.4	2.5	28.8	6.4	1.4	2.4	1.1	0.59	0.18	4.3	0.04	16.0	3.5	1.3	0.45	
Embezzlement . . . . .	2.3	15.4	1.4	6.7	31.8	3.9	4.6	12.3	0.82	1.7	0.15	2.3	0.01	18.7	1.7	1.5	0.30	
Receiving stolen goods . . . .	3.5	15.8	5.3	5.3	22.2	10.3	6.8	4.2	2.5	0.52	0.24	1.1	0.02	14.4	5.5	1.8	0.54	
Fraud . . . . .	2.4	19.0	1.2	6.2	31.6	2.3	8.4	10.1	0.78	2.1	0.13	3.1	0.01	9.6	1.0	1.4	0.16	
Unlucky . . . . .	4.0	6.58	0.58	12.1	...	2.9	29.8	4.0	1.1	2.3	...	...	...	...	...	12.6	...	
Arson . . . . .	4.5	39.3	3.8	5.9	22.3	4.3	2.4	1.6	0.74	0.39	0.12	4.0	0.04	7.1	1.3	1.7	0.47	
To 100 adults of the total popu- lation there were in 1895, accord- ing to the statistics of the Ger- man Empire, Vol. III . . . . .	7.0	13.6	1.21	5.6	17.0	14.5	2.3	4.1	4.6	2.2	1.8	4.3	0.2	0.6	0.4	2.8	1.9	

etc.). Their social position and economic condition, descent, and education, form a powerful protection against the temptation to crime — but, unfortunately, not an adequate one. The figures for usury and fraud equal, those of sexual crimes exceed, the figures showing the proportion of this group to the whole population.

In 1889 a special census was taken of some of the independent professions; the result showed that, per 10,000 higher court officers, there were 3.5 convictions; to the same number of lawyers, 56; of physicians, 70; of teachers, 29.5. The total number of convictions was rather small; in all only three higher officers of justice were convicted. Nearly half of the convictions among the lawyers, and more than half among the physicians, were for insult; among the teachers one-third of the convictions were for the same offense, one-sixth for assault and battery committed in office ("Körperverletzungen im Amte"), one-eighth for sexual crimes. Of the 58 convicted ecclesiastics, 23 were sentenced for insult, 11 for defamation. All in all, the short period of one year during which these observations were made does not permit us to attach any particular significance to the figures. The data concerning the criminality of students are more valuable and will be dealt with later.

The number of convictions among servants is very small, Rykere's assertion to the contrary. Their commonest crime is theft, but even of this offense they do not commit more than their share. The large number of thefts is partly due to the temptation that daily confronts these people, who for the most part are still quite young. As, notwithstanding, the status of crime among servants is so favorable, we shall probably not err in attributing this to their being so well provided for. They have sufficient food, comfortable shelter, suitable clothing, and so are not exposed to absolute need.

The group, "without occupation, and with no occupation

given" is composed of many elements. To it belong the inmates of various institutions, who usually have little or no opportunity to commit crimes, students, persons living on their incomes, and those who are supported by others; also those who, though employed in some way, failed to give their occupation. We shall not go far astray in assuming that some professional criminals are numbered among the latter; this view is supported by the high percentage of usurers.

Finally, a seventh group is made up of "workmen who have not given the nature of their employment," constituting 1% of the population, but responsible for 10% of the crimes committed. The figures showing the percentage of convictions for receiving stolen goods (14.4), larceny (15.), embezzlement (12.7), resisting an officer (15.8), offenses against chastity (8.9), perjury (7.9), are sufficient to indicate what dangerous characters are hidden beneath this apparently harmless designation. The supposition that we mentioned in connection with the group, "persons without occupation," is even more justified in respect to this group. Those workmen are probably also included who, owing to physical or mental defects, are unable to find permanent employment either in industrial or agricultural life; but most of the group undoubtedly do not deserve the honest name of "workmen." Indeed, in 1903, of 3836 convictions for inducing women to prostitution, 590 fell to the share of these "workmen," who make up 1% of the population! In the criminal statistics it is very properly stated<sup>1</sup> that many persons who are not working are included in the census as "workmen," a misnomer that is not to the advantage of the real workmen and is most unfitting.

As has already been mentioned, special statistics of the independent professions have been compiled. It was recognized at the beginning that no great result could be expected,

<sup>1</sup> N. F. XCV, II, 35.

as the economic and social conditions of men in these professions prevent their being much exposed to crime. The difficulty of obtaining such special statistics of other, less sharply defined, occupations is very great, but, when once collected, they are more valuable. Statistics of crime in certain trades requiring absolutely different minds and temperaments, such as butchers and hairdressers, would be very desirable; also those of hotel-keepers, waiters, men-servants, midwives, and of engravers and locksmiths, whose technical skill, as Lindenau<sup>1</sup> in particular has pointed out, determines the manner, and perhaps also the frequency, of their criminal acts. Finally, it seems to me essential that the share that prostitutes have in crime should be ascertained.

#### § 6. National Customs. Alcohol

The baleful influence of alcohol is one of the best known and most transparent causes of crime. It is true that the effect of alcohol can be fairly calculated only when the crime is the direct consequence of alcoholic indulgence. And yet it is just the indirect effect of alcoholism that is of so much greater importance and is so much more distressing, because those who are affected are by no means always drunkards.

The descendants of inebriates are seldom of normal health and intelligence. During a period of twelve years, Demme<sup>2</sup> was able to observe the children in two groups of ten families, each group living under the same economic conditions. One group, in which no intemperance could be traced, had 50 normal children that lived; 5 children died, 2 were afflicted with St. Vitus's dance, 2 were mentally deficient, and 2 had congenital malformations. In the ten families of drunkards,

<sup>1</sup> *Lindenau*, "Beruf und Verbrechen" (ZStW. XXIV, 381).

<sup>2</sup> *Demme*, "Über den Einfluss des Alkohols auf den Organismus des Kindes," 1891.

there were only 10 normal children; 25 children died, the 22 others were mentally deficient, cripples, or epileptics. Legrain<sup>1</sup> found very similar conditions. Of 761 children of drunkards, 72.6% were degenerate, that is, mentally deficient, epileptic, or insane. Of 54 children, in 50 families, who lived to grow up and whose fathers and mothers were drunkards, 63% were themselves intemperate; some of these drunkards, and the rest of the descendants, in all 44.4%, were mentally diseased. Bourneville<sup>2</sup> ascertained that, among 1000 feeble-minded, epileptic, and imbecile children who were admitted to Bicêtre between 1880 and 1890, there were 620 cases in which the father or the mother or both had been intemperate; information was unobtainable in 171 cases.

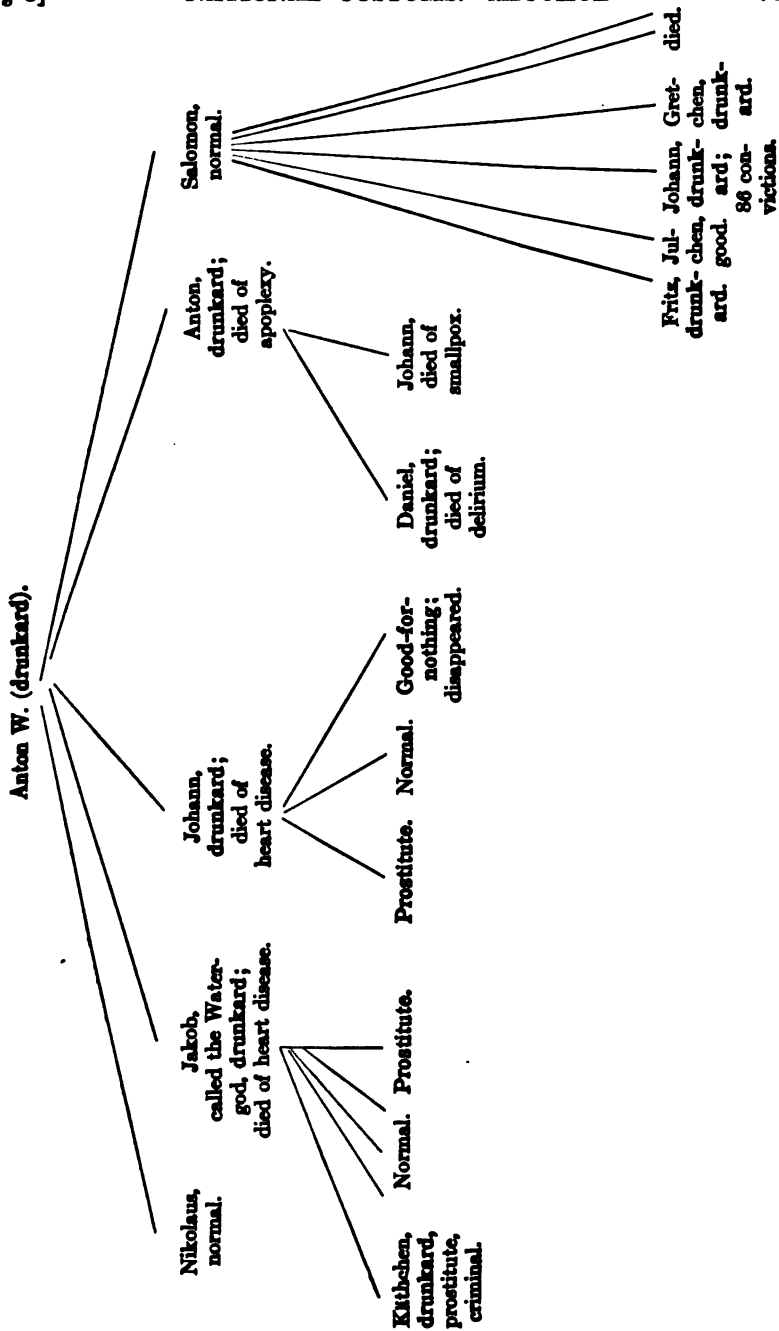
This is the sorry birthright of the children of drunkards. Physical and mental cripples, how can they be equal to the struggle for existence? They are the born candidates for the insane asylum and the prison. Among the tramps that he examined, Bonhöffer<sup>3</sup> found 57% that were handicapped in this way; most of them were themselves drunkards. This direct inheritance of the inclination to drink is very clearly illustrated in the accompanying genealogical table taken from my own observation.

But it is not alone this sad heritage that menaces the children. It is not necessary to dwell upon what life means in the family of a drunkard. Sunk in filth and wretchedness, inured to the horrible sight of intoxication, accustomed to the brutal selfishness of the father, to low quarrels and rough handling, how can a child form any moral conceptions? The street, with all its dangers, becomes the second home of such unfortunates. It is solely due to a lucky chance if they

<sup>1</sup> Legrain, "Dégénérescence et alcoolisme," Paris, 1895.

<sup>2</sup> Matti Holenius, "Die Alkoholfrage," Jena, 1903, p. 246.

<sup>3</sup> Bonhöffer, "Über grossstädtisches Bettel- und Vagabondentum" (ZStW. XXI, 20).





themselves do not learn to drink in their earliest youth. The dread of prison, too, early disappears. Most drunkards come into conflict with the law from time to time, and the child who often knows his father to be in jail soon loses his fear of the criminal judge.

This is only one phase of the danger to which the children of drunkards are exposed. It is increased by the poor economic condition of drunkards' families. Liquor is a large item in the temperate workman's expense account; how much larger must it be in that of the drunkard? Whether he is working or is on strike, whether he takes a holiday on black Monday or is out of employment owing to his habits, the quantity of alcohol he consumes remains the same; it is his wife and children that go without the necessities of life. The poverty and wretchedness thus engendered among the women and children not seldom leads to their first criminal steps, the first theft, the first sentence.

I shall content myself with these few references to the indirect influence of alcoholism on the criminal world; it is much easier to prove the results for which the occasional drunkard and the inebriate are directly responsible.

Baer<sup>1</sup> has collected the most comprehensive statistics relating to the connection between crime and alcoholic indulgence. He obtained his facts from 49 Prussian penitentiaries and 32 prisons for men, 18 penitentiaries and prisons for women, and 21 houses of correction and reformatories for both sexes. Of 30,041 male prisoners, 49.9%, of 2796 female prisoners, 18.1% were drunkards.

The number of drunkards, as the following table shows, is approximately the same among all male convicts.

That we do not find intoxication noted among the tramps

<sup>1</sup> Baer, "Der Alkoholismus, seine Verbreitung und seine Wirkung auf den individuellen und sozialen Organismus," Berlin, 1878, p. 349.

in the workhouse is only natural. A crime committed in a state of intoxication leads to prison and the penitentiary, not to the workhouse. But nearly half of the vagabonds are habitual drinkers. Snell<sup>1</sup> and Bonhöffer<sup>2</sup> found even higher figures than Baer. Bonhöffer ascertained that, among 113 tramps who had become criminals before their twenty-fifth year but at the time of examination were above that age, there were only twelve who did not drink spirits regularly every day. The average quantity was three-quarters of a litre. In the house of correction in Wunstorf (Hanover) Snell found, among 100 inmates, 87 who for years had been in the habit of drinking 1½ litres of spirits a day. 67% naturally showed signs of chronic alcoholism.

TABLE XIII

KIND OF INSTITUTION	NUMBER OF PRISONERS	DRINKERS						AMONG THE DRINKERS THERE WERE			
		IN ALL	%	OCCASIONAL	%	HABITUAL	%	OCCASIONAL	%	HABITUAL	%
Penitentiary	19,581	8817	45.1	4006	23.6	4811	21.5	4006	52.2	4811	47.0
Prison . . .	8,067	3324	41.6	2465	30.5	859	10.7	2465	70.4	859	26.3
House of Correction	2,443	1058	43.3	....	....	1058	43.3	....	..	....	....

More drunkards are found in the penitentiaries than in the prisons; but, on the other hand, crimes committed during intoxication lead oftener to prison than to the penitentiary. In order to explain this phenomenon, the crimes for which the sentences were imposed would have to be examined, but I do not believe the statistics to be such that this can safely be done. They do not distinguish sharply enough between occasional drunkards, habitual drunkards, and sober persons.

<sup>1</sup> *Snell*, cited by *Hoppe*, "Die Tatsachen über den Alkohol," 2d ed. Berlin, S. Calvary, 1901, p. 216.

<sup>2</sup> *Loc. cit.* p. 13.

Generally speaking, the occasional drunkard is one who drinks to excess only on special occasions, whereas the habitual drunkard is one who does not need a holiday or some festival as an excuse for excessive indulgence. But, as there are only too many festive occasions for the man who is seeking them, the distinction between the two groups becomes blurred. In addition, many a man is a steady drinker who seldom or never gets drunk, and, on the other hand, a man may become intoxicated on rare occasions without being a drunkard. These considerations show how subjective judgment must be in such cases; 120 directors of penal institutions, probably aided by subordinate officials, have had a hand in the statistics mentioned. Hence the weak points in subjective opinions of alcoholism and intoxication confront us 120 times and prevent a uniform consideration of the results.

More useful are Baer's<sup>1</sup> figures relative to the inmates of the penal institution, Plötzensee, near Berlin, for in this case he alone was the judge. Of 3227 prisoners, 1174 (= 36.5%) drank; 999 (= 84.2%) of these were occasional, the other 175 habitual, drinkers.

In the figures given in Table XIV the number of crimes committed by the habitual drunkards falls considerably below that committed by occasional drunkards; their offenses may be divided into two groups. The first consists of assault and battery, resistance to State authorities, breach of the peace, malicious mischief and sexual crimes; in other words, it consists of crimes that are committed with violence and brutal force. The second group is made up of thefts and embezzlement. Even a slight degree of intoxication makes the execution of these latter crimes more difficult, while it facilitates the commission of the crimes in the first group.

<sup>1</sup> *Loc. cit.* p. 352.

Geill<sup>1</sup> too, in an examination of first offenders in Copenhagen, found a considerable variation in the different crimes; of the thieves, 14.61%, without being habitual drinkers, were drunk at the time the offense was committed, while, among the delinquents who had committed crimes of violence, the percentage rose to 64.81.

TABLE XIV

OFFENSES	TOTAL NUMBERS	OF THESE THERE WERE:			
		OCCASIONAL DRUNKARDS		HABITUAL DRUNKARDS	
		No.	%	No.	%
Assault and battery . . . . .	351	180	51.3	11	3.1
Resistance to State authority . . .	429	300	70.1	22	5.1
Breach of the peace . . . . .	217	120	55.2	3	1.3
Malicious mischief . . . . .	78	43	55.1	4	5.1
Sexual crimes . . . . .	44	29	66.0	4	9.0
Theft . . . . .	1467	243	16.5	90	6.0
Embezzlement . . . . .	260	49	18.8	11	4.2

The same difference appears in the scanty statistics compiled in the Grand Duchy of Baden<sup>2</sup> covering the period from October 1 to December 31, 1895. While, in the 148 cases of resistance to authority 64%, of assaults and battery 46%, of the offenders were intoxicated, this was true of only 7% of the offenders in 613 cases of theft.

Though this relation between crime and intoxication may seem quite comprehensible, it is nevertheless unfortunate that the criminal's own statements about his condition cannot be relied upon. According to the circumstances, he will endeavor to exaggerate or conceal the degree of intoxication; nor can

<sup>1</sup> Geill, "Alkohol und Verbrechen in Dänemark" (Der Alkoholismus, 1904, p. 218).

<sup>2</sup> "Der Missbrauch geistiger Getränke im Grossherzogtum Baden." Karlsruhe, 1896, p. 51.

the testimony of witnesses and the, frequently subjective, views of the judge do away with the objection.

An interesting attempt to determine the connection between intoxication and crime, and one that is wholly free from the reproach of subjective judgment, has been made by the examining judge, Otto Lang,<sup>1</sup> in Zürich. His work is based on the official records of the district court in Zürich for the year 1891. In this year 141 persons were convicted of assault and battery, or of participation on brawls in which assault and battery took place. Lang has ascertained the days of the week on which these criminal acts occurred.

TABLE XV

THE OFFENSE WAS COMMITTED ON	CONVICTED PERSONS
A Saturday . . . . .	18
A Sunday . . . . .	60
A Monday . . . . .	22
Some other day, but at night, or in a public-house . . . . .	25
The other four days of the week, but in the daytime . . . . .	16
Total . . . . .	141

Thus we see that on the 208 days in the year on which less alcohol is consumed, only 41 of the 141 convicted persons committed the offense, the remaining 100 persons having transgressed on the 157 days on which we may safely assume that there is more alcoholic indulgence.

The explanation is perfectly obvious. On Saturday, pay-day, a portion of the weekly wage is always spent for drink; on Sunday the workman, whose home is rarely attractive enough to keep him there, has no other refuge, especially in wet or cold weather, than the public-house, and on Monday

<sup>1</sup> *Otto Lang*, "Alkoholgenuss und Verbrechen," Basel, Friedrich Reinhardt.

he often stays at home to recover from the effects of his excessive alcoholic indulgence the day before.

We see that the cases of assault and battery coincide, as regards time, with pay-days and holidays, and there is only one argument against our regarding alcoholic indulgence as the cause. The danger of quarrels is naturally greater on Sundays, when music and dancing, public festivals and excursions, crowd large numbers of idle people into limited spaces, whereas on week-days they are kept busy in factories and workshops. But this argument is not a sufficient explanation of the facts, because the large share of the crimes that are committed on Saturdays and Mondays points to the same cause that leads to the excess of crimes on Sunday. Schröter<sup>1</sup> has ascertained what proportion of the cases of assault and battery that occur on Monday are due to persons who have remained away from work on that day. He found that, among 2178 such cases, 215 occurred on Monday, and of these, 112 (= 53%) were committed by men who did not go to work on that day.

A number of further investigations which are given in Table XVI showed the same results with slight variations. I am indebted for my own material to Mr. Fertig, Medicinal Councillor in Worms, who, at my request, was kind enough to collect, during four years, from November 8, 1896, to November 7, 1900, all the notifications that he received asking him, in his capacity as circuit physician of the sanitary board of Worms, to make an official examination of persons who had suffered injury. From these notifications, in which the day on which the injuries were inflicted was given, it was easy to

<sup>1</sup> Cited by *Kobłinski*, "Alkoholismus und Verbrechen." Bericht über den internationalen Kongress zur Bekämpfung des Missbrauches geistiger Getränke in Basel, 1896; Schriftstelle des Alkohol-Gegnerbundes, p. 164.

ascertain on what week-days the assaults that made official action necessary were committed.

TABLE XVI

THINGS WERE COMMITTED:	AFTER V. KOSLINSKI		MY OWN STATISTICS ASSAULT AND BATTERY	AFTER KÜRZ, ASSAULT AND BATTERY	AFTER LÖFFLER, CRIMES OF VIOLENCE AND SEXUAL CRIMES	
	ALL CRIMES	ASSAULT AND BATTERY			IN VIENNA	IN KORN- MUNING
Sundays . . .	165	121	254	502	289	120
Mondays . . .	68	32	125	182	190	31
Tuesdays . . .	28	9	69	95	128	30
Wednesdays . .	20	9	62	67	100	26
Thursdays . . .	20	5	62	62	86	30
Fridays . . .	17	4	48	82	110	24
Saturdays . . .	62	25	103	94	128	50
Unknown . . .	...	...	...	32	...	...
Holidays . . .	...	...	...	126	63	16
Total . . .	380	205	723	1175	1094	327

The most comprehensive material has been collected in the government criminal statistics (Vol. CLV, II, p. 34). In 1902, of the 97,376 persons convicted of aggravated assault and battery, 34,652 had committed their offenses on Sundays or holidays, 60,543 on working days. In 2181 cases the day was unknown. On Sundays and holidays (60 days in the year) there were 578 offenses each; on week-days 198. This is not including local holidays and festivals. (3.4 : 1.)

The same picture confronts us whether the investigation is made in Worms, in Rhineland, or in Vienna.<sup>1</sup> Kürz has extended his investigations to the place of the deed.<sup>2</sup>

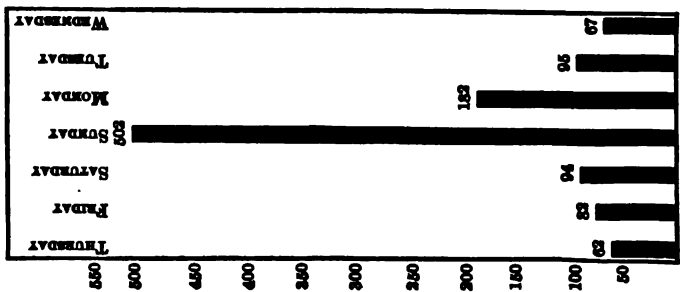
Nothing could show more clearly what gives the immediate impulse to assault and battery than the fact that two-thirds of all fights take place in, or in front of, a public-house.

<sup>1</sup> Löffler, "Alkohol und Verbrechen" (ZStW. XXIII, 538). A comprehensive summary of the literature is found in *Helenius, loc. cit.*

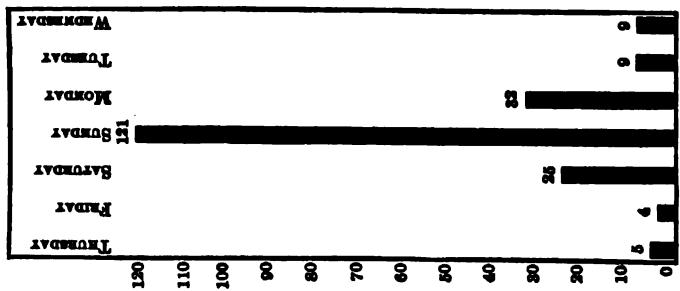
<sup>2</sup> Kürz, "Zur prophylaxe der Roheitsdelikte" (MSchrKrimPsych. II, 27).

PLATE III

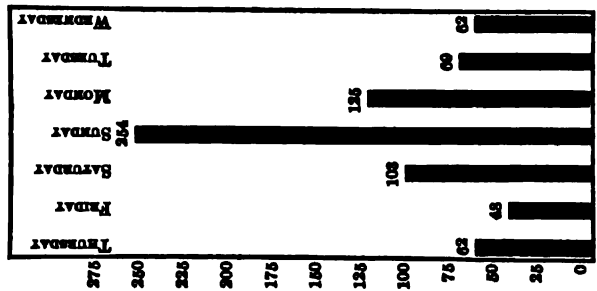
DAYS WHEN ASSAULTS ARE COMMITTED



After Kürz (Heidelberg).



After v. Koblenz (Rheinprovinz).



After my own statistics (Worms).



The few figures that I have given speak volumes. They reflect sadly on what is called "Sunday rest." As long as it is impossible for the workman, the young merchant, the day laborer, to spend his Sunday in a suitable way, — in the discussion of the prophylaxis of crime it will be explained what is meant by this, — as long as the public house is the only attractive spot open to him, the unfortunate conditions will continue that moved the chaplain of a penal institution, Pastor Heim,<sup>1</sup> to exclaim: "The Lord's Day law in its present form is a very doubtful benefit."<sup>2</sup>

TABLE XVII

LOCALITY	1900	1902	1903	1904	TOTAL	%
Public-house . .	195	210	174	163	742	66.5
Dwelling-house .	9	23	36	18	86	7.7
Street . . . . .	9	25	35	29	98	8.8
At work . . . . .	33	22	20	87	87	7.8
Unknown . . . .	14	10	21	102	102	9.2
Total . . . . .	260	290	286	279	1115	100

That it is not the workman alone who is imperilled by drink, is proved by the criminality of students, which has twice, in 1893<sup>3</sup> and in 1899<sup>4</sup> been made the subject of special investigation in the government statistics. There is scarcely any class of men that is so advantageously situated as our student body. Coming out of educated families, as most of these students do, brought up under the influence of and fully comprehending ethical conceptions, removed for the most part from all material cares — where are conditions found

<sup>1</sup> *Hugo Heim*, "Die jüngsten und ältesten Verbrecher," Berlin, Wiegandt und Grieben, 1897, p. 90.

<sup>2</sup> Also *Krauss* ("Der Kampf gegen die Verbrechensursachen," Paderborn, 1905, p. 65), in his capacity as a Catholic priest, agrees with this view.

<sup>3</sup> "Statistik des Deutschen Reiches," N. F. LXXVII, II, p. 7.

<sup>4</sup> "Statistik des Deutschen Reiches," N. F. CXXXII, II, p. 48.

better calculated to prevent conflicts with the penal law? Hence, it is so much the more striking when we find that in 1893, of 42,000 students, 350, in 1899, of 54,000, 435, were convicted.

TABLE XVIII

	PER 10,000 STUDENTS THERE WERE CONVICTIONS		CONVICTIONS PER 10,000 PERSONS OF PUNISH- ABLE AGE	CONVICTIONS PER 10,000 MEN FROM 21 TO 25 YEARS
	1893	1899	1899	1896-1898
All crimes and offenses . . . . .	83.3	80.6	123.6	332.7
Insult . . . . .	22.2	17.9	14.3	19.8
Aggravated assault and battery . . . .	15.0	9.4	24.5	95.8
Resisting an officer . . . . .	14.5	13.9	4.4	17.4
Malicious mischief . . . . .	9.3	10.5	4.9	17.0
Simple assault and battery . . . . .	5.5	4.6	6.9	24.4
Breach of peace . . . . .	4.1	5.6	5.8	19.1
Theft, also when repeated . . . . .	0.7	1.5	21.0	51.5
Fraud, also when repeated . . . . .	0.5	3.0	6.3	16.4

Compared with the criminality of all classes of society, that of the students appears very grave, especially taking into consideration how few of their crimes are offenses against property, which constitute 46% of all the crimes and offenses against the laws of the land.<sup>1</sup> We may therefore certainly take into account the fact that the students are just at the age at which, as experience has taught us, the inclination to transgress against the law is especially pronounced. I have, therefore, also given the relative figures for the age between 21 and 25 years. To this age belonged 245 of the convicted students,<sup>2</sup> and undoubtedly also the majority of all students.

The differences, in contrast to the general criminal inclina-

<sup>1</sup> "Statistisches Jahrbuch für das Deutsche Reich," XVI, Plate V.

<sup>2</sup> It is striking that among the convicted students 17 were over 30 years of age.

tion of the population, are the more remarkable, especially in the last two kinds of offenses, when we see how they are balanced in all the crimes and offenses in which "the high spirits of youth," as the government statistics courteously express it, cross the legal boundary. Nor may we overlook the fact that cases of insult among the students themselves seldom come before the courts; moreover, breach of the peace ("Hausfriedensbruch"), insult, and simple assault and battery, being offenses prosecuted only at the request of the injured party, are frequently settled out of court. The frequency of cases of resistance to executive officers is especially deplorable; doubly so when committed by future judges, teachers, and physicians. The necessity of turning to the age most inclined to crime in order to find equally high figures, and the fact that, as regards malicious mischief and insult, the students as a class cannot bear comparison with the total population, do not permit us to view this matter with complacency.<sup>1</sup>

Insult, breach of the peace, malicious mischief, resisting an officer, assault and battery, — all these offenses bear the same character, that of insubordination and violence. As neither lack of home training nor acquired brutality can be the cause of these acts, no explanation remains but that of excessive alcoholic indulgence. The kind of offense does not vary in the least from the rough acts that are committed by the less cultivated working population. It may well be said that, without alcohol, convictions of students, as we have the right to expect, would be exceedingly rare. Student life shows us a sort of artificial criminality that is due solely to the customary use, or rather abuse, of alcohol.

<sup>1</sup> On the whole, the year 1899 seems to show improvement over the year 1893, though not, unfortunately, as regards theft and fraud. The severity of the sentences, too, tells the same story (in 1893 19, in 1899 only 2, were sentenced to prison for aggravated assault and battery).

In discussing the geographical distribution of crime, I have already pointed out that the distribution of aggravated assault and battery coincides exactly with the varying amount of alcohol consumption. In a study of criminality in Württemberg, Rettich<sup>1</sup> speaks of the statistics of assault and battery as indicating the character of the resident population. It is not the hungry apprentice traveling in search of employment, the journeyman, or the habitual thief, that commits such crimes. "But the resident young factory workman, when he has received his wages, is, indeed, often in a quarrelsome frame of mind, and the majority of the fights that follow, judging by experience, take place Saturday or Sunday evening."

In my opinion, cases of aggravated assault and battery do not indicate the character of the population, but they undoubtedly do characterize local and national customs. Rettich, however, is, I think, right in saying that the danger lies not in the depravity of the habitual criminal, but in intoxication. Drunkards undoubtedly commit their share of these crimes, but it is not the larger one: with 60.4% of the persons who were convicted of aggravated assault and battery in 1889 it was their first offense! In 1900 the percentage was 51.8; in 1901, 59.3; in 1902, 58.4; 1903, 57.5; 1904, 57.3; thus exactly three-fifths of those convicted are persons of unblemished reputations who pay heavily for their intoxication on Sunday. Our view is well borne out by the surprising sameness of the figures for several years, with approximately 100,000 convictions in a year. The characteristic manner of the crimes, which are all stamped as impulsive, shows that it is not the depravity of the drunkard, who lives as a parasite at the expense of society, that is so dangerous, as the occasional excess of the workman, the craftsman, the student.

<sup>1</sup> Rettich, "Die württembergische Kriminalität" (Württembergische Jahrbücher für Statistik und Landeskunde, Jahrgang 1899, I, p. 409).

In the army and navy quite different, but psychologically related, crimes appear: from 1894 to 1899 in 88 (2%) of the cases of military insubordination, in 75.4 of the cases of fatal assault, intoxication was officially determined. The conclusiveness of all the subjective experience of judges, of all statistical data, still leaves a gap, in failing to show in what way the connection between excessive alcoholic indulgence and assault and battery can be explained. We must turn first to the question of the psychic effect of alcohol. Not until within the last decade have exhaustive investigations been made, by Kraepelin<sup>1</sup> and his pupils, of the effect of larger and smaller quantities of alcohol on intellectual attainments.

Even quantities that are entirely insufficient to produce intoxication, and that would correspond to the amount contained in from a half to a whole litre of beer, bring about a distinct slackening of intellectual power, evidence of which appears in difficulty in remembering, and in retardation of simple psychic processes; as, for instance, in the addition of simple figures, or, in experiments with compositors, in a decrease in the amount of work performed. The sequence of ideas, also, is disturbed, the conceptual relation of words to one another is loosened. All these affections do more towards explaining the depravity and obtuseness of the drunkard than the explosions due to intoxication. Rather, the proven deterioration in the perception of external impressions might help us to an understanding of criminal actions; it gives rise to a misunderstanding of gestures and words. But, in my

<sup>1</sup> *Kraepelin*, "Beeinflussung einfacher psychischer Vorgänge durch einige Arzneimittel." Fischer, Jena, 1892; *Aschaffenburg*, "Psychologische Arbeiten." I, published by E. Kraepelin, Leipzig, Engelmann; *Kürz und Kraepelin*, *Ibid.*, III, p. 417; *Martin Meyer*, *Ibid.*, III, p. 535; *Oseretzkowsky und Kraepelin*, *Ibid.*, III, p. 587; *Ernst Rüdin*, *Ibid.*, IV, p. 1; *Smith*, "Die Alkoholfrage," Tübingen, Osiander, 1895; *Fürer*, "Bericht über den internationalen Kongress zur Bekämpfung des Alkoholmissbrauchs," Basel, 1894, p. 369.

opinion, no extensive influence can be attributed even to this effect.

On the other hand, we know of another effect of alcohol that is of the greatest interest. In experimental psychology a certain movement that responds to a certain irritation is called the reaction; by movements, not only those of the hands being understood, of course, but also those of the tongue and vocal muscles. Between the irritation and the beginning of the responsive movement a period of time, that is measurable by delicate instruments to within one one-thousandth of a second, elapses. This is the time occupied by the psychic process. It is, of course, very short when the work that the mind has to do is very simple, as, for instance, in experiments where the reaction consists of a formerly agreed-on, easy movement of the finger responding to a sound. Under the influence of even very small doses of alcohol this period is shortened still more; but this acceleration is not to be regarded as an improvement in the performance, for, as experiments have shown, it takes place at the cost of reliability. The psychic process induced by the irritation is either superficial or is omitted altogether; the reaction represents nothing but an involuntary movement as a response to an irritation, or to an anticipated irritation. The instant when the irritation takes place, which can be fairly accurately foreseen, is anticipated; the responsive movement occurs at the moment when the irritation is expected, not after it has been actually carried out; somewhat in the same way as a soldier in his first attempts at target practice, or under special stress, can no longer control his eagerness and pulls the trigger before he has done taking aim.

This kind of response to an irritation is called a "premature reaction"; if the mind had to choose between two or more movements, the premature reaction becomes a "false reac-

tion." The occurrence of these premature and false reactions, after indulgence in alcohol, are obviously due to a condition of increased excitability precisely in executing movements. The psychic process of deliberation is slighted, owing to the increased motorial tension. Whether the actual irritation was the one expected, and whether the response corresponded to it and was purposeful, does not usually become clear to the criticism that follows, until the error has been made and cannot be recalled.

This effect of alcohol on the activity of psychic functions is applicable to the events of everyday life. And it enables us to see the connection between intoxication and crime in the proper light. In the public-house, and afterwards in the street, the same qualities of alcohol are effective. The irritation consists of an utterance, an abusive word, a threatening gesture, an accidental knock; the reaction is an insult, a blow with the fist, with a stick, with a beer glass, a stab with a knife.

If the normal course of the reaction were not affected by the alcohol consumed, the afterthought might exercise its authority, and the most practical form of defense be found against the attack, which is so often only an imaginary one. But, just as in the experiments performed in the laboratory, the psychic process is hindered or prevented by the liquor that has been drunk; the response to the irritation follows prematurely; by the time the mind has done its work, the increased motorial excitability has delivered the blow. The judgment of the reason comes limping along after the hasty action.<sup>1</sup> "The increased facility of motorial reaction is the

<sup>1</sup> It may be pointed out here how very important the results of these experiments are for the problem of "free determination of will." The reaction is a simple act of the will. As small a quantity of alcohol as 10 gr., corresponding approximately to only about  $\frac{1}{4}$  of an ounce of brandy, a tenth of a litre of wine, or a quarter of a litre of beer, alters the reaction. Thus, even such small doses,

source of all those unpremeditated and purposeless, because impulsive and violent, actions, which have made alcohol so notorious, not only in the history of the foolish and audacious, but especially in the annals of crimes of passion."

The knowledge of the psychological effect of alcohol gives us a full understanding of the crimes that are committed under its influence. We might calculate what kind of offenses they would be, even without the aid of constant observation and statistics. In its very first stages, motorial excitability shows itself in loud talkativeness, screaming, singing — disturbing the peace; then the impulse to make purposeless motions finds occupation in handling inanimate objects, the color and shape, often the mere existence, of which, act as an irritation — damaging property; there follow altercations with persons, which lead, in rapid sequence, to insult, to breach of the peace, to resistance to officers, to assault and battery, both simple and aggravated.

They are always the same acts, taking their course according to the scheme of premature, unpremeditated, exaggerated reactions responding to an external irritation. Thus, too, it becomes comprehensible that the crimes are not the result of habitual drinking, but of occasional intoxication. Of course, the chronic inebriate, too, will sometimes succumb to the acute effect of alcohol, and, when intoxicated, will commit an assault, perhaps sooner than the usually sober workman. But in this case, too, it is the alcoholic excess of the evening that is

entirely insufficient to produce intoxication, disturb the action of the will. This gradually increases up to the point where the action of the will ceases altogether, the state of intoxication recognized in § 51 of the penal code. It follows: 1, that the lack of an intermediate step between the freedom of decision and complete cessation of the will's action is based on insufficient psychological preliminary knowledge; 2, that responsibility for an act performed under the influence of liquor must be made exclusively dependent on the degree of intoxication.



the immediate cause. To how much greater an extent does this apply to the numerous workmen, young clerks, and students who, while intoxicated, commit some crime, and pay for the excess of a moment with imprisonment, disgrace, and the ruin of their whole career.

We cannot overestimate the significance of these facts for the prophylaxis of crime, especially in view of the extent to which the crimes of alcohol, aggravated assault and battery in particular, predominate. The certain knowledge of this important cause of a large group of crimes, opening up to us the possibility of adopting really effective measures in regard to it, is our only consolation in considering the misery produced in our country by the custom of drinking.

#### § 7. Other Forms of Indulgence

With us in Germany the abuse of other luxuries is a very small factor in criminality. Lombroso's<sup>1</sup> assertion that the habit of taking snuff among prostitutes and criminals, and of smoking among recidivists, proves the existence of an "etiological tie between tobacco and crime," is without any solid foundation. When we consider the kind of psychological effect that tobacco has, it is difficult to understand how a crime could be produced by its use. The same applies to tea and coffee. Their effect on the processes of the mind is so entirely different from that of alcohol, that it cannot surprise us if no crime can be attributed even to their misuse.

In recent years, however, alcohol has had to compete in the east of Germany with a dangerous rival, ether. After an intoxicating effect of very short duration, ether produces a condition of numbness and paralysis, so that it is not so likely to lead to crime as alcohol. We do not as yet know what degenerative effects it may have on the children of those who

<sup>1</sup> *Lombroso, loc. cit.* p. 90.

indulge in it, but it is certain that its habitual use, by destroying family life and undermining the economic balance, creates conditions that are favorable to the growth of crime. It behooves us, therefore, to keep an eye on this social menace, and to take steps to prevent the misuse of ether before it becomes a rooted custom.

The opium habit is of no importance in Germany, or anywhere in Europe, and need only be mentioned because of its prevalence in Asia, especially in China, and the same is true of the hasheesh habit, which is found to such an extent in Northern Africa and Egypt. The effect of both is so paralyzing on the motorial centres especially, that it is next to impossible for the users of the drug to move about in public while under its influence, so that no danger to people in the streets can follow.

Morphine has an effect similar to that of opium. It can never become a national poison in the true sense, owing, fortunately, to its high price. It is used mainly by educated people, especially by those belonging to the professions in which it is easily procurable. According to Rodet,<sup>1</sup> among 650 men addicted to its use, 287 were physicians and 21 druggists.

It has this disadvantage in comparison with alcohol, that those who are accustomed to it find it more difficult to do without it, and very seldom succeed in breaking themselves of the habit. The first signs of degeneration due to morphine soon appear, — neglect of appearance, of family, of duty. The desire for the drug becomes more and more irresistible, and when the legal way of procuring it, by a physician's prescription, or the illegal but easy method of purchasing it from a druggist, fails, the victim frequently resorts to the forgery of a prescription, to fraud and theft, and, if it be a woman,

<sup>1</sup> Rodet, "Allgemeine Wiener medizinische Zeitung," 1897, No. 27.

to prostitution, in order to obtain it. When, as quite often happens, the same person is addicted to the use of both morphine and alcohol, the case is, indeed, grave.

The use of cocaine is a rarer cause of crime than is the use of morphine. When, however, cocaine is responsible, it has always led to an acute psychosis, accompanied by the hallucinations that are usually produced, generally in a few months, by indulgence in this drug for even a relatively short time. Such crimes must therefore — I personally have known a case of uxoricide by a physician — be regarded as the acts of insane persons.

### § 8. Prostitution

Prostitution, that is, self-surrender for payment, originally instituted by priests for the honor of the divinity and the benefit of the temple, and later put into practical form by statesmen like Solon, has existed in all ages and will always continue to exist. The most ancient historical documents<sup>1</sup> speak of it; but they also tell us — a fact that is important for legislation — that all conceivable means of repressing it had already been tried. In vain! With the weapons of religion and Christian love Louis XI of France, for instance, attempted to abolish it altogether and founded places of refuge for fallen women. On his return from Palestine he ordered it to be completely exterminated. The concealed prostitution that immediately began to flourish everywhere, however, compelled him, before a year had elapsed, to repeal the order and to assign certain streets to the use of prostitutes.

The harshest measures (flogging, the pillory, and capital punishment) proved of no avail in repressing the evil, which continued to spread and thrive only in a more secret and dangerous form, and they were always given up after a time.

<sup>1</sup> *Eugen Miller*, "Die Prostitution." J. F. Lehmann, Munich, 1898.

Thus, in all countries, legislation has oscillated between extremes, turning from the method of herding prostitutes together in barracks to allowing them unlimited freedom, from occasional superintendence to the strict supervision of every individual. The tendency to respect the rights of the individual and to place them above those of society, on the one hand, and, on the other, the moral fear of sanctioning the evil by legally allowing it, have always led to the repeal of regulative measures. This has been followed by such a spread of prostitution in its most dangerous, clandestine form, that it later became necessary to recognize and regulate it again.

We may regret, but we must not ignore, the fact, that the tendency to immorality cannot be exterminated by laws. The man who had the most extensive knowledge of prostitution, Parent du Chatelet,<sup>1</sup> said that, wherever people congregated, it was as unavoidable as sewers or cess-pools. But, because it seems to be impossible to abolish this evil, it does not follow that it should be allowed to grow and spread in all directions. Its repression should be striven for as far as possible, and for that, it is essential, above all, that its dangerousness should be thoroughly understood.

We may leave the danger to health undiscussed; I will merely mention that the annual number of cases of venereal diseases in the German army, which is better off than that of France or Austria in this respect, equals a third of the number of men who were wounded during the Franco-Prussian war,<sup>2</sup> and that in the German hospitals,<sup>3</sup> from 1889 to 1891, 4.4% of all the patients were suffering from such diseases; that is, almost as many as those suffering from the scourge tubercu-

<sup>1</sup> *Parent du Chatelet*, "De la prostitution dans la ville de Paris," 1857.

<sup>2</sup> *Töply*, "Die venerischen Erkrankungen in den Armeen" (*Archiv für Dermatologie*, 1890).

<sup>3</sup> "Medizinische statistische Mittheilungen aus dem kaiserlichen Gesundheitsamt," III, p. 45.

losis (4.8%). In considering these figures, we must not overlook the fact that only a relatively small number of persons suffering from sexual diseases (according to Guttstädt, perhaps 5%) go to hospitals. Important as the prevalence of such diseases is to the physician and the sociologist, it would take us too far afield to discuss this phase of the problem of prostitution. But the extent to which prostitution exists and its effect on criminality must be dealt with at length.

The number of prostitutes can scarcely be given in figures. Those that are registered by the police as "Kartenmädchen," "Kontrolldirnen," etc., represent but a small percentage, especially in large cities. In Berlin, for instance, there are about 3000 under police supervision, but the whole number of such women in that city is placed at from 40,000 to 50,000.<sup>1</sup> Conditions are not very different elsewhere; whole armies of girls live entirely or largely on the money they earn by prostitution.

Where do all these women come from, and what presses them into this calling? There are two views as to this, and they are rather harshly and directly opposed to each other. According to the one, prostitutes are the victims of our social conditions, which make it so difficult for a woman to get on honestly; Bebel<sup>2</sup> and Hirsch<sup>3</sup> may be mentioned as its typical exponents. Lombroso and Ferrero,<sup>4</sup> Tarnowskaja<sup>5</sup> and Ströhmberg,<sup>6</sup> however, think that necessity plays but a small part in forcing women into prostitution. They

<sup>1</sup> Number 173 "der amtlichen Drucksachen des Reichstages," p. 931.

<sup>2</sup> *August Bebel*, "Die Frau und der Sozialismus," Stuttgart, 1897, 27th ed., p. 176.

<sup>3</sup> *Hirsch*, "Verbrechen und Prostitution als soziale Krankheitserscheinungen," Berlin, 1897, Th. Glocke.

<sup>4</sup> *Lombroso und Ferrero*, "Das Weib als Verbrecherin und Prostituierte."

<sup>5</sup> *Tarnowskaja, P.*, "Étude anthropométrique sur les prostituées et les voleuses," Paris, 1889; translated by *Kurella*, Hamburg, 1894.

<sup>6</sup> *Ströhmberg*, "Die Prostitution," Stuttgart, 1899, Ferd. Enke.

look upon the prostitute as a degenerate, and regard prostitution as the equivalent of the male world of crime, the form of criminality peculiar to women.

We cannot fail to recognize that prostitution does absorb a considerable percentage of criminally inclined women. Every prostitute lives without working, at the expense of society; she corresponds in a measure to the male beggar and the vagabond. In a period of three years Baumgarten<sup>1</sup> found only 32, 30, and 41 convictions among 2400 prostitutes, and altogether only 21 cases of theft. He accounts for this by the prostitute's absolute lack of energy. Those few prostitutes who make a practice of robbing, he believes to be, first of all, thieves who have turned to prostitution because it affords easy opportunities of stealing from men. Ströhmberg contrasts the prostitutes of the passive, indolent type, with another group that consists of those who have some secondary occupation as well. But only in very rare cases is it honest work; generally it is thieving. Of the 462 prostitutes that Ströhmberg examined, 175 were thieves, of which 32 came from notorious families of thieves. His figures, which, though dealing with small groups, are, nevertheless, noteworthy because they are so reliable, show that prostitution is neither a contrast nor an equivalent to crime, but rather that the two are often united. It must, however, be admitted that a large percentage of prostitutes, in spite of their passiveness, would turn to crime if the possibility of living by prostitution did not exist.

On the other hand, it cannot be denied that the necessity that sometimes makes a man a thief may as easily drive a woman to prostitution. The low pay received by certain classes of working women, especially waitresses, second-rate

<sup>1</sup> *Baumgarten*, "Die Beziehung der Prostitution zum Verbrechen" (Arch. KrimAnthr. XI, 10).

actresses, and dressmakers' assistants, makes it necessary for many a girl to supplement her wages in some way. But we must not forget that a large number are led to adopt these dangerous occupations, instead of becoming domestic servants, for instance, by their strong sexual impulses and their love of dress and an apparently comfortable life.

Just the figures that Bebel, Blaschko, and others give in support of the view that it is poverty that drives women to prostitution seem to me to prove the contrary. It is true that working women, saleswomen, dressmakers, and, above all, former domestic servants, predominate, but they also form an unusually large part of the population; Behrend's proofs that 5.3% of all prostitutes live with their parents must make us suspicious. These better situated women belong to the not inconsiderable number who have not officially turned to prostitution, but they differ from the girls who are under police supervision only in the manner in which they carry on their occupation. Ströhmberg found poverty given as the cause of prostitution only in one case, and in that particular instance he ascertained that it was absolutely untrue.

I would not, however, deny the significance of economic wretchedness. Girls that come from the very lowest proletarian classes, the daughters of drunkards and prostitutes for instance, never, of course, learn to look upon prostitution as anything degrading.<sup>1</sup> Still graver in its consequences is the present custom that prevents prostitutes from being restricted to certain localities. They now live, as a rule, in workingmen's families. From their earliest childhood onward the children in the house see the practice of this occupation, and it is the outward brilliance that often impresses them, rather than the underlying misery; daily they see work, hunger, and scanty

<sup>1</sup> *Bettmann*, "Die ärztliche Überwachung der Prostituierten," Jena, 1905, p. 257.

clothing in their own families in crass contrast to the life of idleness, theatres, concerts, balls, and luxury in dress that the prostitutes enjoy. These impressions remain and facilitate the first step towards vice. If, later, necessity or temptation, love of adventure, and envy of a friend's smarter clothes, confront a young girl, the force of habit, and knowledge of the life, have dulled her sensibilities in that direction to such an extent that resistance is possible only to an unusually strong character.

This, it seems to me, is the course of development in most cases, and on it my opinion is founded. Undoubtedly our social conditions — miserable economic circumstances and the fact that prostitutes are not restricted to certain localities — are the cause of prostitution, but these factors are effective only when descent and training, and, above all, natural disposition, prepare the ground for them. And natural disposition or temperament is, indeed, of the most importance; not so much, pronounced sexual instincts, for just among prostitutes they are often lacking, but general inferiority of the mind. "In many cases prostitution is to be regarded solely as a symptom of a defective psychic condition," says Bonhöffer,<sup>1</sup> who, among 180 prostitutes, found that only one-third were without psychic anomalies. Just as the weak are the first victims of great epidemics, so, too, in the struggle for existence, it is the many defective natures that first sink into the morass of prostitution.

There are next to no statistics regarding the share that prostitutes have in criminality. Offenses against police ordinances are not included in our criminal statistics. They are the torment of our lower courts. It is not rare for the same prostitute to be sentenced 50 times and more, accord-

<sup>1</sup> Bonhöffer, "Prostituierte" (ZStW. XXIII, 119).



ing to the strictness of the supervision and her own skill in evading it. An accumulation of offenses from time to time results in her being turned over to the higher court. This means a sojourn in the workhouse for a period that is increased by three or six months at every subsequent conviction by this court, but, on regaining her liberty, she immediately returns to her former life.

Two factors that are inseparable from prostitution are largely instrumental in causing her relapse — the traffic in prostitutes and the activity of the men who live on the earnings of prostitutes, commonly known as panders or cadets. Section 180 of our Penal Code is probably quite unique. The renting of rooms to prostitutes is classed as traffic in prostitutes; none the less, all prostitutes must have dwellings somewhere, or, if they carry on their occupation away from home, they must have at least a lodging. As has been mentioned, about 3000 prostitutes are officially known to the police in Berlin, who also know where and in whose houses they live. This fact must somehow be reconciled to another, that for some years past in Germany the number of convictions for traffic in prostitutes has never exceeded 4000 annually, in the whole country! In all the larger cities, and often, too, in smaller towns, — I need name only Hamburg, Altona, Kiel, Cologne, Mainz, Strassburg, Heidelberg, Mannheim, Karlsruhe, Freiburg, Nuremberg, Munich, Leipzig, Dresden, Halle, and Magdeburg, — there exist official brothels known to the police as such, — often, in fact, whole streets of brothels. The fine distinction that bestows the name of brothel in the “technical police sense” only on those houses that are licensed to sell liquor, that have a common entertainment room, and in which the proprietor wrings large profits from the prostitutes, has no existence in reality. With or without a license, the keepers of such houses sell

wine and spirits, and, with or without a concession, they treat the girls like slaves.

The actual meaning of "Kuppelei" is tersely contained in the simple definition, "affording the opportunity for prostitution"; do the authorities then know nothing of the way in which the prostitutes are looted and robbed by the extortionate methods of their landladies? Whether they live in common dwellings or alone, it is only the owner of the house that profits by their occupation, and, as a rule, the prostitute leaves the brothel poorer than when she entered it. But this does not pronounce the death sentence of the brothel, for the prostitute who lives alone suffers even worse treatment, as she is robbed by both the landlady and her "cadet."

It can safely be asserted that there is no more abominable form of crime than that practised by these men who act as go-betweens for prostitutes. It is inseparable from clandestine prostitution, and, at the same time, is very difficult for criminal justice to get hold of. Every judge will confirm the fact that many obstacles intervene to prevent conviction for this offense; partly because of her affection, partly because of her loyalty, but mainly because of her fear, it is not easily possible to induce a prostitute to testify against such a man, and it is not rare for her to commit perjury in order to get him out of his difficulty. In many cases, especially at the beginning of their career, prostitutes might turn to some other mode of life, were it not for their unfortunate dependence on these so-called "protectors." The extent of their other crimes, robbing the men who visit their prostitutes, and assaults with and without dangerous weapons, is beyond exact knowledge, for we are seldom able to recognize officially such a panderer in the man who is arrested for some other offense.

All these dangers to society thrive the more rankly, the stricter the police is in its repression of all houses resembling

brothels, — for the prostitutes are thus driven into the hidden corners of the city, into the low public-houses, and the public parks, — and the more the fear of arrest causes them to draw the veil of night over their dark doings. There is only one evil that it is difficult to separate from the brothel system, and that is the traffic in prostitutes. And yet the best remedy, even for this, is an efficient system of segregation. If, as in Bremen, it is made impossible for keepers of brothels, and lodgings for prostitutes, to overcharge and rob these women, the traffic in prostitutes becomes unprofitable, and thus the chief motive is removed.

There is also less temptation for prostitutes in brothels to rob the men who visit them. In many cases no complaint is made if a theft is committed by a prostitute, as the victim would rather suffer his loss than allow the matter to become public. The same is true of the not infrequent attempts to blackmail, of threats to sue for maintenance, or of denunciation for attempting to procure abortion, and also of the carefully planned scenes in which the pretended husband discovers the pair and has to be pacified with money. But where there are well-supervised brothels, the danger of such crimes is greatly diminished. The improvement of the sorry conditions under which, owing to the treatment they receive, prostitutes now live will also contribute to greater legal security.

It is well known that there is a movement on foot to abolish brothels, and, indeed, to put an end to all state supervision. The reasons for this so-called "abolitionist movement" are entirely of a sentimental nature; greatly as we admire its ideal tendency, we must none the less deplore the complete lack of understanding of the matter that its advocates manifest.

The abolition of prostitution, as history shows, cannot be

accomplished. Its dangers, especially for public health and the morality of the people, are so great that the State is bound to keep, within certain limits, the evil that it cannot exterminate. Measures adopted to this end have as little to do with the approval or support of prostitution as the legal steps taken to repress crime have to do with its recognition as a profession. But, even if this were not so, we might point to such examples as Solon, Louis the Saint, the Popes<sup>1</sup> Benedict IX, Paul II, Sixtus IV, Julius II, Leo X, and St. Augustin. If it were possible to put an end to prostitution, its sufferance and regulation by the State would certainly undermine the morals of the people. Now, however, the State does not countenance prostitution (§ 180), though it does recognize it through the penal law and police ordinances (§ 361, 6). It provides a penalty for an offense that it can and will prosecute only in very rare cases. This undoubtedly works greater harm to the people's sense of right and justice than would a statute, any offense against which would be energetically followed up and punished.

Advantages to be gained by the institution of brothels, or, better, the barrack system now used in Bremen, are the protection of the public health, the removal of the prostitutes from the streets and public places, and the diminution of public scandal that would thus be attained. Above all, if certain houses and streets are set apart for prostitutes and made subject to State supervision, especially if the paragraphs relating to traffic in prostitutes are made severer, thus preventing the plundering and overcharging of prostitutes, the business of the procurer will be practically done away with, and that is a benefit to which public legal security is certainly entitled.

<sup>1</sup> *Krauss, loc. cit.* p. 277.

### § 9. Gambling and Superstition.

Gambling is of comparatively slight criminal significance with us in Germany. The number of those who ruin themselves by games of chance is not large in proportion to the total criminality. It is much greater in countries like Austria and Italy, where even the poorest persons take part in the so-called "little lottery." Though it is difficult to determine accurately the number of thefts and embezzlements that are indirectly due to the passion for gambling, and the losses it entails, yet it can scarcely be doubted that there is a connection between the two. The hope of escaping from all financial care by one lucky stroke, which feeds the passion for gambling of many an educated man and many an officer, and which eventually brings about their downfall, must of course become the more enticing the lower the classes of the population are that engage in gambling. The feverish excitement with which in Italy everyone waits for the numbers to be drawn each week, is a very grave sign in the eyes of the sociologist, and, if he observes the figures of those who venture their last few coins on this hazard, he will not underestimate the temptation to dishonesty. In addition, superstition has no stronger support than the passion for gambling. Not a few persons in Italy live by prophesying the outcome of the lottery and giving advice in regard to it.

For a number of years the tendency to gamble, and the deceptive hope of winning great gains easily, have been increasing to an undesirable extent. It is just as impossible to ascertain the large sums that are gambled away at the races as it is to determine the number of thefts and frauds that are committed to provide money with which to bet on the horses. It has been attempted to prevent all these doings by closing the betting-rooms, but with doubtful success. In

spite of all efforts, it has not been possible, up to now, to prevent the activity of the bookmakers, and the money of the poor and the youthful will continue to find its way to them. I cannot help fearing that this opens up a new and plenteous source of crime, with which we shall have to reckon in future.

Superstition ceases to play a part in the commission of crimes as soon as the average education of a people has reached a certain height, though it may still occasionally happen that a shrewd fellow takes advantage of a simple-minded person's superstition, especially in the sphere of religion. I do not fail to recognize what Hans Gross in particular has done for our knowledge in tracing certain crimes to a superstitious source. It certainly sometimes gives us the key to otherwise incomprehensible crimes, and oftener enables us to interpret some of their attendant phenomena. But, fortunately, such cases are rare. I do not think that we shall often meet, henceforward, in cultured countries with crimes that are based on superstition, except, of course, those committed by insane persons. In Russia, however, judging by Löwenstimm's<sup>1</sup> investigations, the number of offenses that are due to the belief in witches is greater. He mentions the sacrifice of human beings in times of famine and pestilence, the murder of magicians and witches, and of children with physical deformities (changelings), the opening of graves for the purpose of obtaining talismen and to prevent the return of vampires, the rape of innocent girls, and sodomy committed in order to cure gonorrhoea.

In Italy, too, especially in the southern provinces, superstition prevails even in the very highest classes. Bulls' horns, amulets, mystic signs, such as the extension of the index and little fingers ("gettatura"), used to ward off the evil eye

<sup>1</sup> Löwenstimm, "Aberglaube und Strafrecht," Berlin, 1897, Johannes Råde; Löwenstimm, "Der Fanatismus als Quelle der Verbrechen," Berlin, 1899.

("mal' occhio"),<sup>1</sup> are, indeed, harmless evidences of superstition, but they prove how little enlightened the southern Italians in general are.

Many a puzzling penal offense is probably rooted in superstitious ideas. Gradually, as the people become more enlightened, this danger will grow less. Yet we really have no reason to look down too haughtily on Russia and Italy. The regrettable fact that even so-called educated people allowed themselves to be deceived in the most brazen manner by the spiritistic flower medium, Mrs. Rothe, the ignorant wife of a tinker, shows how deeply rooted the inclination to superstition is. We should also be preserved from over-estimation of ourselves when we recall the hundreds of thousands of lives that were sacrificed in the persecutions of witches, the last of which was not longer ago, in Germany, than the end of the 1700s; while, in Mexico, such persecutions continued up to the end of the 1800s.

#### § 10. Economic and Social Condition

The man who stands on a height to view a landscape can discern the character of the country, the positions of the mountains and valleys, more clearly than one who, standing in the valley, finds the distant view shut off. So, too, a glance backwards over many years discloses the heights and depths of social life, and penetrates to their causes more easily and distinctly than can the consideration of a single year.

The last twenty years of German criminality are especially suitable for such an analysis, because no transfiguring upheavals have taken place; the years having been marked by a great economic and cultural advance. Yet, notwithstand-

<sup>1</sup> It is told openly in Rome that pious Italians, while they were being blessed by Pope Pius IX, who was supposed to have the "evil eye," used to make the sign of the "gettatura" behind their backs!

**TABLE XIX**  
**INCREASE OF CRIMES IN GERMANY**  
**To 100,000 civilians of punishable age there were:**

Convictions for	1883	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1882 to 1891	1892 to 1901
Indecent assaults on un- scious persons, children, rape	9.0	8.6	8.6	8.9	9.3	9.3	9.1	9.3	9.4	9.5	9.8	10	12	12	12	11	12	12	12	13	9.3	12
Simple assault and battery	52	54	59	53	50	53	55	53	63	64	65	69	72	74	74	71	70	69	66	69	53	71
Aggravated assault and bat- tery	121	106	150	159	165	170	165	163	177	178	187	205	216	221	221	223	240	245	237	243	160	230
Resistance to State authority	41	140	48	43	44	45	40	41	43	43	44	46.6	50.1	48.9	49.9	50.2	47	50	45.7	47.6	42.7	43.9
Insult	125	125	133	136	130	133	126	126	133	133	132	142	147	146	147	146	148	145	135	141	130	145
Breach of the peace	44	42	48	40	49	43	44	43	50	49	51	51	54	55	53	53	59	59	56	57	47	56
Malicious mischief	36	35	39	40	30	40	37	33	49	40	42	45	47	45	43	47	43	49	47	43	39	47
Simple theft	250	241	238	214	210	196	194	211	206	216	236	292	296	293	294	289	291	279	281	290	219	296
Simple theft, when repeated	33	33	37	35	35	33	30	33	32	33	36	34	33	33	32	32	33	31	31	33	35	33
Fraud and embezzlement	30	40	43	43	45	47	43	54	55	50	64.3	64.2	66.6	66.8	63.6	60.6	69.3	60	66.4	70.7	49.0	67.9
Lèse-majesté	1.4	1.2	1.2	1.2	1.2	1.2	1.2	1.4	1.5	1.5	1.5	1.7	1.7	1.6	1.5	1.3	1.3	1.1	0.78	0.75	1.4	1.3
Perjury	3.2	2.9	2.9	2.5	2.5	2.6	2.4	2.2	2.2	2.3	2.2	2.4	2.2	2.5	2.1	2.1	2.1	1.8	1.6	1.8	2.6	2.1
All crimes and offenses	1040	1034	1080	1062	1080	1081	1043	1037	1105	1124	1202	1212	1244	1249	1244	1240	1237	1236	1196	1246	1087	1251



ing, the number of convicted persons has been steadily increasing every year, even allowing for the growth of the population. New legislation is but very slightly responsible for this. The chief changes are found just in those crimes that, by their frequency, determine the whole aspect of the subject.

In looking over the most important crimes, the principal statistics relating to which are given in part in Table XIX, we notice four types of frequency. Some crimes occur almost equally often. Such are, for instance: false accusation, incest, sodomy, criminal negligence resulting in manslaughter, robbery and extortion, illegal imprisonment. Others, like usury, perjury, murder, and infanticide, evading military service, crimes and offenses in office decrease; they shed rays of light, especially when contrasted with the gloomy picture that the third group presents. It consists, apart from a few offenses which have for their object the procuring of certain advantages in connection with property (fraud and forgery), of crimes of violence, aiding prisoners to escape, resisting an officer, breach of the peace, indecent offenses, simple and aggravated assault and battery, rape, insult, and malicious mischief. All these crimes are increasing from year to year, some of them at a positively alarming rate.

Finally, in the fourth group of offenses I include those that show the greatest variation in frequency. The causes of this are multifarious. Thus, for instance, the numerous misdeeds of "procurers" called forth such an outcry against these wretched fellows that the courts found it expedient to proceed against them with somewhat greater severity; unfortunately this energy seems to be evaporating already.

Tense political conditions increase temporarily the number of convictions for "*lèse-majesté*," the "year of attacks," 1878, in which the number of prosecutions for this offense increased thirteenfold, is particularly well remembered. These prose-

cutions took place, not, of course, because the desire to insult the sovereign grew so marvelously, but because the "criminal irritability of the public," as Seuffert<sup>1</sup> calls this supersensitiveness, and, we might add, of the courts, in such a period of political excitement, saw some danger to the State lurking behind every reckless remark.

The extent to which external circumstances sometimes influence criminality has been shown by Seuffert in the statistics of causing fires by negligence. During the years 1892-1899 from 1.5 to 2.1 persons per 100,000 adults were convicted of this offense. The only exceptions were the years 1892 with 3.3 and 1893 with 3.2 convictions. From the publications of the Royal Prussian Meteorological Institute, Seuffert was able to ascertain that these two years were particularly dry nearly everywhere. This would, of course, increase the danger of starting fires by carelessness.

More important than all these relatively rare crimes are the convictions for theft. Their fluctuations weigh the more heavily because the frequency of this offense is rivaled only by that of aggravated assault and battery. How important the variation in the different years is, appears in the fact that the number of convictions for this crime and for embezzlement in 1892 exceeded that of 1888 by 28,409. It is impossible that in four years about 30,000 persons can have so deteriorated morally that without weighty external reasons they turn to crime. The sudden return to honesty is almost more striking, for, in the following year, the number of persons convicted of theft decreased by 14,757. What causes these fluctuations?

Theft is the appropriation of others' property, that for some reason rouses the desire for possession in the person who commits the offense. If a man's material circumstances allow him

<sup>1</sup> Seuffert, *loc. cit.* p. 31.

to gratify all his wishes, he will scarcely yield to the temptation to take what belongs to another. But this is not the case with the poor man, who, in times of need and higher cost of living, suffers from a lack of everything.

The mode of life of our working classes is by no means practical and economical. The money that is spent in the public-house would be far better laid out for food, for larger and airier dwellings, or put by for times of emergency. But we must reckon with this, just as with the fact that illness and misfortune may reduce even the most industrious workman to beggary. Moreover, it is true that a large part of the population never earns more than enough for the necessities of life, even in times of prosperity. Every increase in the cost of living must therefore make the conditions of life more difficult, and this is felt the more keenly, the closer the family lives to the minimum cost of existence; hunger and misery looming ahead will unsettle even the firmest principles.

Attempts to prove this by statistics are not lacking. Thus, von Mayr,<sup>1</sup> after comparing the fluctuation in the offenses against property and in the price of grain, came to the following conclusion: "In the period from 1835 to 1861, in the Bavarian territory this side of the Rhine, about every half groschen added to the price of grain called forth one theft more per 100,000 inhabitants, while every half groschen that grain declined in price prevented one theft."

This comparison is based on the assumption that the economic conditions that prevail in a given year are indicated by the price of grain. This has always been assumed, until, recently, Heinrich Müller,<sup>2</sup> under the guidance of Conrad, has

<sup>1</sup> *von Mayr*, "Die Gesetzmässigkeit im Gesellschaftsleben," Munich, 1877, p. 346.

<sup>2</sup> *Heinrich Müller*, "Untersuchungen über die Bewegung der Kriminalität in ihrem Zusammenhange mit den wirtschaftlichen Verhältnissen," I.-D. Halle, 1890, Kämmerer.

tried to show that the economic significance of the price of grain in the production of crime has disappeared. Instead, he contends, the general industrial situation is becoming of more and more importance in its effect on the status of criminality. It may readily be admitted that, in times of industrial prosperity, wages rise, and the workman has more to spend for food; this rise in wages may even balance an increase in the price of bread, just as the latter is more disastrous in its consequences in times of dullness and lack of employment.

Hence the attempt of Fornasari di Verce<sup>1</sup> to consider the status of industry, and the fluctuations in the cost of food, in relation to each other, is worthy of special note. He calculates how many hours of labor in each year, at an average wage, are necessary to buy a certain amount of grain (100 kg.). The comparison of these figures with the number of simple and aggravated thefts for the years 1875 to 1885 showed a distinct parallel between the two. Kurella<sup>2</sup> found the same result for the years 1880 to 1888.

It is, unfortunately, not always possible to make these comparisons; I have tried in vain to obtain the necessary figures for Germany. The "Zentralblatt für das Deutsche Reich" publishes wage-tables, but they cover too short a period of time and, in addition, show tremendous local differences. Consequently it is impossible to use them for this purpose, unless the comparison be made only for very small districts, when the smallness of the figures would greatly detract from the usefulness of the result.

The objections that Müller has raised to the adoption of food prices as a measure of prosperity might make further consideration of the relation between the two seem super-

<sup>1</sup> *Fornasari di Verce*, "La criminalità e le vicende economiche d'Italia."

<sup>2</sup> *Kurella*, "Der neue Zolltarif und die Lebenshaltung des Arbeiters," Berlin, 1902, Julius Springer, p. 27.

fluous. If the relation between the economic situation and theft were indistinct, we might, indeed, dispense with a further discussion of this question. But we shall see that this is not

TABLE XX

## ECONOMIC SITUATION AND CRIMINALITY IN FRANCE

(After Lafargue: "Die neue Zeit," 1890, pp. 20, 21.)

YEARS	PRICE OF BAG OF 150 KILOS OF FLOUR IN THE FAIR MARKET FRANCE	SIMPLE THEFT	FRAUD	EMBEZ- LEMENT	CRIMES AGAINST THE PERSON	INDICENT ASSAULTS AND RAPE OF	
						ADULTS	CHILDREN
1840	67.56	19,531	1374	1126	1622	157	284
1841	52.02	17,377	1297	1177	1765	181	381
1842	58.35	18,383	1270	1232	1669	161	308
1843	55.14	19,900	1399	1269	1771	180	339
1844	58.24	21,010	1504	1299	1612	149	392
1845	55.33	20,633	1407	1316	1658	198	274
1846	69.04	24,753	1489	1544	1696	145	379
1847	90.58	31,596	1883	1698	1622	141	374
1848	41.48	20,120	1294	1360	1616	154	356
1849	46.31	22,070	1375	1450	2015	222	467
1850	43.54	23,121	1475	1651	2146	254	524
1851	43.47	24,516	1652	1653	2161	242	615
1852	52.15	23,090	1980	1997	2013	228	611
1853	67.12	33,940	2284	2204	1921	212	573
1854	87.86	39,484	2629	2420	1691	174	581
1855	90.84	37,883	2733	2471	1613	160	582
1856	91.16	36,848	2519	2669	1702	181	650
1857	67.02	35,737	2703	2690	1657	188	617
1858	48.10	29,374	2790	2501	1947	238	784
1859	46.91	27,792	2666	2542	1851	226	718
1860	59.60	30,331	3123	2680	1607	180	650
1861	75.42	32,729	3524	2850	1696	217	695
1862	65.88	32,131	3842	2929	1762	213	728
1863	59.21	29,155	2431	2655	1673	171	750

the case. Moreover, special emphasis must be given to the fact that at present the price of bread turns the scales, as regards the workman's expenses.

The consumption of bread is unusually large in the working classes. According to Max May's <sup>1</sup> workmen's housekeeping plans the total annual expenditure for this necessary article

TABLE XX—Continued

ECONOMIC SITUATION AND CRIMINALITY IN FRANCE

(After Lafargue: "Die neue Zeit," 1890, pp. 20, 21.)

YEARS	PRICE OF BAG OF 150 KILOS OF FLOUR IN THE PARIS MARKET	SIMPLE THEFT	FRAUD	'EMBE- ZLEMENT	CRIMES AGAINST THE PERSON	INDECENT ASSAULTS AND RAPE OF	
						ADULTS	CHILDREN
1864	51.43	23,345	3341	2752	1703	176	764
1865	49.60	23,078	2432	2313	1750	178	820
1866	60.62	22,623	2422	2799	1777	160	883
1867	80.92	33,097	2306	3143	1704	124	805
1868	81.22	35,035	2990	3183	1697	161	726
1869	58.10	31,613	2750	3292	1658	146	710
1870	63.81	20,531	1623	1563	1297	54	558
1871	86.59	27,662	1684	1912	1561	112	526
1872	72.99	34,961	2705	3110	1669	124	682
1873	79.92	35,289	2913	3390	1708	97	783
1874	71.10	34,170	3008	3079	1731	139	825
1875	57.08	30,020	2380	3122	1765	140	813
1876	61.31	31,781	2710	3195	1849	140	875
1877	68.78	33,351	2968	3309	1653	108	804
1878	67.82	31,802	2345	3238	1614	84	788
1879	63.75	32,943	2997	3468	1677	130	812
1880	65.09	37,029	3445	3621	1512	80	676
1881	65.94	35,757	3674	3747	1608	90	718
1882	63.87	35,930	3434	3679	1660	95	752
1883	59.96	35,959	3449	3795	1582	108	675
1884	51.11	35,845	3231	3545	1629	83	705
1885	49.45	34,259	3673	3679	1518	65	622
1886	50.94	34,457	3595	3824	1507	78	634

is more than a sixth of the workman's whole income. The price of bread, however, does not depend on the excellence

<sup>1</sup> Max May, "Wie der Arbeiter lebt," Berlin, 1897.

of the grain crop, but on the bourse, as Hirschberg<sup>1</sup> has shown. Consequently, every increase in the price of grain must affect severely just that part of the population that stands lowest in the economic scale.

As a standard by which to measure the price of food, Lafargue<sup>2</sup> adopted the price of a sack of flour weighing 150 kg., which was fixed by the municipal authorities, in this case in Paris, and was entered in the annual records of the baking trade. A comparison of the figures shows that every rise in the price of bread was followed by an increase in the number of thefts, embezzlements, and frauds, while a decline in the price lessened the number of crimes (Table XX).

German statistics also show the close relation between the fluctuations in the cost of grain and the number of thefts (Table XXI). It is true, however, that both in France and Germany it is not the absolute height of the prices that is decisive, but their rise and fall. The year 1882, for instance, shows the highest percentage of thefts in the last 17 years, while the price of rye, in the same year, was moderate. It was very high, however, during 1880 and 1881, and the effect was still felt, or rather first felt, in 1882. The same conditions are noticeable in the following years. The highest and lowest points touched by the price of grain do not occur simultaneously with the highest and lowest number of thefts; the effect of the former is not felt till a year later (Plate IV).<sup>3</sup>

This is partly due to an external cause, which Albert Meyer<sup>4</sup>

<sup>1</sup> C. Hirschberg, "Conrads Jahrbücher 1899," III Folge, XVII, p. 255. Compare also the figures in Table XXI.

<sup>2</sup> Paul Lafargue, "Die Kriminalität in Frankreich. Untersuchungen über ihre Entwicklung und ihre Ursachen. Die neue Zeit," 1890, p. 20.

<sup>3</sup> Bongér gives a very similar table for the Netherlands in "Criminalité et conditions économiques" (Amsterdam, 1905, p. 623), a work that also contains many valuable statistics relating to the same problem.

<sup>4</sup> Albert Meyer, "Die Verbrechen in ihrem Zusammenhange mit den wirtschaftlichen und sozialen Verhältnissen im Kanton Zürich," I.-D. Jena, 1895, Gustav Fischer, p. 31.

TABLE XXI  
GRAIN PRICES AND CRIMINALITY IN GERMANY

YEARS	1	2	3	4			5
	RYE PRICE PER 1000 KG. IN BERLIN	RYE BREAD PER 1 KG. IN BERLIN	WHEAT PER 1000 KG.	PER 100,000 CIVILIANS OF PUNISHABLE AGE THERE WERE PERSONS CONVICTED OF			SIMPLE THEFTS PER 100,000 YOUTHFUL OFFENDERS
	MARKS	MARKS	MARKS	THEFT, ALSO WHEN RE- PEATED	GRAND LARCENY, ALSO WHEN REPEATED	RECEIVING STOLEN GOODS	
1880	187.9	....	....	...	..	..	...
1881	196.2	....	....	...	..	..	...
1882	152.3	....	....	237	33	27	284
1883	144.7	....	....	279	33	25	271
1884	143.3	....	....	269	33	24	275
1885	140.0	....	....	249	37	23	256
1886	130.6	20.8	151.3	244	28	21	259
1887	120.9	20.65	164.4	231	28	21	258
1888	134.5	21.22	172.2	225	27	21	255
1889	155.5	24.69	187.7	244	31	22	281
1890	170.0	27.18	195.4	237	32	22	296
1891	211.2	31.66	224.2	249	32	22	296
1892	176.3	29.52	176.4	272	39	26	323
1893	133.7	21.89	151.5	236	34	23	276
1894	117.8	20.43	136.1	231	35	22	289
1895	119.8	20.63	142.5	224	32	21	278
1896	118.8	20.93	156.2	216	32	20	271
1897	130.1	22.30	173.7	220	31	19	287
1898	146.3	25.15	185.6	224	33	20	293
1899	146.0	24.21	155.3	210	31	19	279
1900	142.6	32.96	151.8	212	30	19	290
1901	170.7	24.23	163.6	223	33	19	284
1902	144.2	24.21	163.1	222	36	20	...
1903	132.3	23.83	161.1	214	34	19	...
1904	133.1	23.50	174.4	227	32	18	...
1905	151.9	24.30	174.8	205	32	18	...
1906	160.6	27.06	179.6	210	35	19	...
1907	193.2	30.82	206.3	209	35	19	...
1908	186.5	31.78	211.2	222	44	20	...
1909	176.5	30.21	233.9	214	43	20	...

Price of rye: "Stat. Jahrbuch Deutsches Reich," 1900, p. 266; *Ibid.*, 1903, p. 188.

Rye bread: "Elster: Souderabdruck aus dem Wörterbuch der Volkswirtschaft," Jena, 1910.

Youthful offenders: "Stat. des Deutschen R. B.," 237, II, 2.

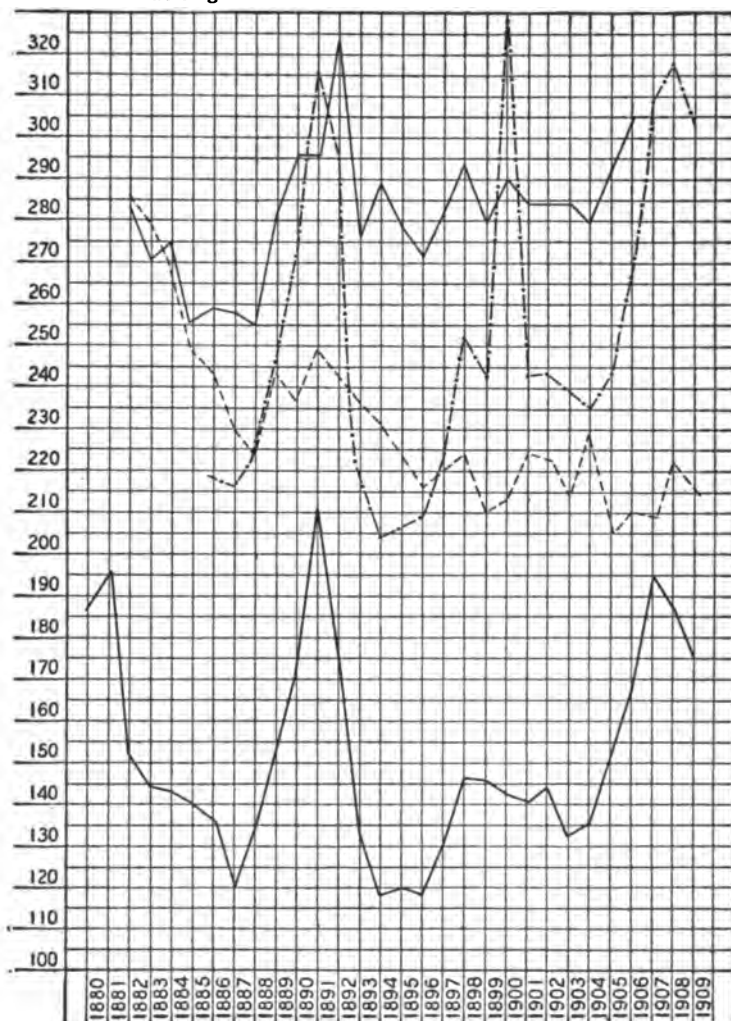
Theft, receiving stolen goods: *Ibid.*, II, 6.



## PLATE IV

## THEFT AND GRAIN PRICES SINCE 1882

- Price of 1000 kg. rye in Berlin.
- - - Price of 1-kilo loaf of rye bread in Berlin.
- Simple theft of youthful offenders to 100,000 of the total population.
- - - Simple theft, also when repeated, to 100,000 inhabitants of punishable age.



has already pointed out. A large proportion of the thefts committed in the early winter months do not come before the courts until the following year, and our statistics generally record crimes, not according to the year in which they were committed, but according to the date when the cases were disposed of. Of still greater importance, it seems to me, is the explanation, first given, I believe, by von Mayr<sup>1</sup> and also accepted by Hermann Berg,<sup>2</sup> that the retail price is not immediately affected by the wholesale price; even when the price falls, the pressure in the economic situation is not at once relieved, any more than a calamity is instantly brought about by a rise in the price.

Müller has entirely overlooked the fact that the effect is thus delayed. This is the only explanation of his considering the increase in the number of convictions in 1892, in spite of the fall in the price of grain, "a distinct proof that no connection exists between criminality and the price of grain." The connection is not such a mechanical, automatically regulated one as von Mayr's remarks (p. 106) might, probably unintentionally, make it appear. The range of price alone is not determinative. Indeed, without affecting the importance of what has already been said, we can admit that in future the price of bread, in comparison with all the other economic factors, will lose something of its significance. Nothing could show more clearly that Müller's doubt of the value of the price of grain as a measure of the economic situation is unnecessary, than the fact that for a period of twenty years theft and the price of bread have only twice, and then but

<sup>1</sup> *von Mayr*, "Statistik der gerichtlichen Polizei im Königreich Bayern und in einigen anderen Ländern," Munich, 1867, p. 160.

<sup>2</sup> *Hermann Berg*, "Getreidepreise und Kriminalität in Deutschland seit 1892." *Abhandlungen des kriminalistischen Seminars Berlin*, N. F. I., 2nd Heft, Berlin, 1902, J. Guttentag.

slightly, deviated from the regular parallelism of rise and fall.<sup>1</sup>

But the establishment of this fact is not enough to answer our inquiry into the deepest cause of this social phenomenon. The conclusion that every theft is an act of desperation brought about by starvation and cold would be entirely wrong. The thefts committed by men, and they are four-fifths of the total number, are seldom of articles that would serve to appease hunger or provide protection against the cold. More important than absolute need, is the inability to adapt oneself to changed conditions. Whoever is accustomed to spend a good deal on amusement cannot easily give up doing so when times are hard. The more a man earns, the greater are his demands in respect to his dwelling, clothing, and food, and the more he spends for amusements of all kinds, in clubs, and for alcoholic drinks. In fact, experience shows that, unfortunately, the sum spent on necessities is less influenced by prosperity than that spent on superfluous pleasures. If wages suddenly decrease, or if, in consequence of a rise in the price of food, a larger proportion of the income is claimed by the necessities of life, the working man, who is the first to suffer under this, does not at once give up his membership in the athletic club, the choral society, the amusement and political clubs to which he belongs, neither does he reduce the amount that he is accustomed to spend on Sunday for beer and other drinks.

In so far I entirely agree with von Rohden,<sup>2</sup> when, on the ground of his experience as a prison chaplain, he protests

<sup>1</sup> In order to avoid any misunderstanding, I wish especially to emphasize that Müller, too, shares the general opinion that the conduct of the population, especially of the working class, as regards the laws, is regulated by the economic situation.

<sup>2</sup> von Rohden, "Von den sozialen Motiven des Verbrechens" (*Zeitschrift für Sozialwissenschaft*, VII, p. 526).

against every theft's being traced back to poverty as its cause. But it means that the situation is altogether misunderstood, when poverty and need are completely rejected as causes of crime, a course followed by the "Rheinisch-Westfälische Gefängnisgesellschaft"<sup>1</sup> at its seventy-sixth annual meeting. If we understand the word "need" in a somewhat wider, less literal sense, the connection immediately becomes clear and comprehensible. It is not the lack of the most necessary things, but the inability to give up habits acquired in times of prosperity, that makes the man prone to yield to temptation. And this danger of yielding is even greater if those who feel the pinch of poverty look on life's pleasures with immature eyes. The number of youthful offenders convicted of theft teaches us that. In their case, the increase in the number of thefts that corresponds to the rise in prices is more pronounced than in the case of the whole population, while the decrease is not so great as among the adults. Young people have relatively larger incomes than mature workmen, for very few of them stint themselves by contributing to the support of the family. When wages are reduced, or prices rise, these youths of unformed character find they must forego certain pleasures, and are soon assailed by the temptation to lay hands on what does not belong to them.

Dishonesty is a remarkably sensitive indicator of the economic situation. This is shown by the geographical distribution of thefts, and is demonstrated anew every winter by the effect of the greater difficulty of maintaining life, and, above all, it is proved by the tremendous variation in different years, and its dependence on the cost of provisions. People of means, it is true, are not affected by economic distress, at least not in a way that would bring about any considerable increase in criminality; but it does strike hard at the poor

<sup>1</sup> (MSchrKrimPsych. I, 715.)

who live from hand to mouth. That the man without means is not at once heroic enough to sacrifice to the necessity of the time all his pleasures, is very regrettable; but it is comprehensible enough, especially when all enjoyable free pleasures are lacking.

Receiving stolen goods is the sister offense of theft, and it, too, follows closely the fluctuations in the price of food. But the connection between the two is indirect. For everything that he steals, unless it be money or something for his own immediate use, the thief requires a receiver.

Of much greater interest are the convictions for fraud and embezzlement. Older statistical reports showed a connection between these crimes and the price of grain, but figures in Germany indicate that, with slight fluctuations, the frequency of these crimes has been steadily increasing since 1882. As has already been pointed out, more convictions for fraud occur in winter, and the number falls again in spring, a proof that decreased receipts are a fruitful source of such transgressions. The apparent contradiction that lies in the fact that, though these crimes are so deeply affected by economic necessity, they are not influenced by the price of food, is not inexplicable. I believe that Berg's<sup>1</sup> explanation is the true one: "Fraud thrives in particular in the noise and bustle of commercial life, where everyone jostles his neighbor in the struggle for gain. The intricacies of trade and commerce offer the best opportunity for deception and falsification, and also the best means of avoiding discovery."

This agrees perfectly with what we learn from a comparison of occupations and crimes. Only 10.9% of the population is engaged in commercial pursuits, but the percentage of such persons convicted of fraud from 1890 to 1894 was 19, of embezzlement 26.2%. During the same period, persons em-

<sup>1</sup> *Loc. cit.* p. 116.

ployed in industrial occupations were responsible for 31.8% of the embezzlements, and 31.6% of the frauds committed, although they constituted only 17% of the population. Thus, we see clearly on what soil these two crimes best flourish. Where commerce and industry thrive, the opportunity for fraud and embezzlement is most frequently found. Hence, eras of economic prosperity increase the temptation, and though they seal the one source of crime, necessity, they allow the number of the dishonest to grow larger. As Herz<sup>1</sup> says: "The atavistic forms of criminality that are generally expressed in taking advantage of an offered opportunity and in deeds of violence, theft, and robbery, are directly dependent on the price of food. Those offenses that are better adapted to modern conditions, as corrupt in purpose but carried out by more civilized means, falsehood and deceit being used instead of violence, have left this primitive dependence on the price of food behind them, and seek their opportunity in the complicated life of the modern business world."

If theft is directly dependent on economic conditions, and fraud and embezzlement relatively independent of them, owing to the fact that two of the important causes of these latter crimes balance each other, there are still other offenses the figures of which seem to be a reflection of those relating to theft. Lafargue,<sup>2</sup> whose work, in spite of its strikingly good qualities, is biased, says: "The material prosperity of capitalistic society is marked by a relative decrease in the number of bankruptcies, and a falling off of criminality in general, on the one hand, and, on the other, by an increase

<sup>1</sup> *Hugo Herz*, "Die Verbrechensbewegung in Österreich in den letzten 30 Jahren in ihrem Zusammenhange mit wirtschaftlichen Verhältnissen" (MSchrKrimPsych. II, 292).

<sup>2</sup> *Loc. cit.* p. 295.

in the number of cases of carnal abuse of children, which become rarer again when business is dull. . . . The rape of children is a characteristic sign of the prosperity of the capitalistic mode of production." The fact is true, and, so far as the bankruptcies are concerned, also its interpretation. But the inference regarding the crime of rape, which Lafargue insinuates and Bebel<sup>1</sup> openly asserts belongs to the educated classes, is not so. I do not know where Bebel obtained the figures that would justify him in stating that: "The so-called 'liberal professions' to which many members of the upper classes belong, are responsible for about 5.6% of all criminal offenses, and for about 13% of all the criminal assaults on children." As a matter of fact, the share of the liberal professions in all sexual crimes from 1890 to 1899 was only 3.3%, while, with their families, they composed 4% of the population. The agricultural laborers, on the other hand, committed 22.6, instead of 15.6%, of the rapes and indecent assaults, workmen in industrial occupations, 43.3, instead of 17%, and this is quite apart from the workmen whose occupation was not given, and who were responsible for nine times as many sexual crimes as would naturally fall to the proportion of the population that they form. Hence, the increase in these crimes attendant on prosperity must be laid at the workmen's doors, among whom, however, I should not in general include the last-named group. We shall not go far astray in connecting this increase with the greater indulgence in alcohol that goes on under prosperous conditions.

The significance of habitual drinking has been elsewhere discussed, and reference made to assault and battery committed during intoxication. It has always been maintained that prosperous years, involving, as they do, a greater con-

<sup>1</sup> *August Bebel*, "Die Frau und der Sozialismus," 28th ed., Stuttgart, 1897, p. 201.

sumption of alcoholic drinks, bring about an increase in the number of cases of assault and battery, and, similarly, that good grape harvests in wine-drinking countries, like France, are, in the same way, detrimental to morality in general.<sup>1</sup> This is perfectly true of earlier periods, as, for instance, those discussed by Lafargue (Table XX), but does not apply to German criminality since 1882. All the crimes the chief cause of which we have found to be alcohol, such as aiding prisoners to escape, resisting an officer, breach of the peace ("Hausfriedensbruch"), simple and aggravated assault and battery, malicious mischief, grow more frequent from year to year.

This growth corresponds to the steady increase in the consumption of alcohol, — not of spirits, which seems to have reached its maximum, but of the chief beverage of the German people, beer. In 1882, only 84.8 litres per capita of the population, including women and children, were consumed, whereas in 1900 this figure had already risen to 125.0 litres; from then on, there is a decrease, so that in 1908 the consumption had even fallen to 111 litres per capita. The consumption of spirits has fallen somewhat since the last decade of the last century, when it was 4.4–4.2 litres. As, however, in 1907–1908 it was 3.8 litres, the decrease is but slight.

The dam formed by the higher cost of living is not strong enough to stem the tide of alcohol. The sums spent for drink do not affect the workman's expenses so much when wages are high and the price of food low. But the figures indicating the consumption of alcohol teach us that he does not save in that direction, even when times are bad, hence the evil consequences of excessive drinking appear in prosperous and necessitous times alike.

In the complicated operation of an industrial State victims

<sup>1</sup> *Ferri, loc. cit.*



are not lacking who are ruined because, owing to lack of natural capacity, or to their low moral and intellectual standards, or to their life-long habits, they are unable to adapt themselves to rapid development and wide fluctuations. The same thing occurs, in agricultural States, to the farmer who cannot weather the crises brought about by bad harvests, or epidemics among his stock, and to the agricultural laborer who cannot tide over the periods when wages are low. The waves meet over the heads of the socially and morally weaker the more easily, the more their firmness has been shaken by crises and calamities.

All these upsettings of the social balance are unavoidable to a certain extent, but we know — unfortunately, better in theory than in practice — how to check their evil consequences.

Absolutely different soil, however, nourishes the artificial crisis, the strike. This means of improving the social situation has been used more and more frequently in recent years. It is not my object to discuss its justification, but the dangers to society that strikes involve must be dealt with.

Where there is strict organization, and careful leaders are in control, there will be but few crimes. It is when there is a preponderance of very young and unmarried workmen that the strike becomes a grave disaster. While fathers of families often join it unwillingly, the young men, who have no one to consider but themselves, are all fire and flame. But the most dangerous element is contributed by those "workmen" of whom we have already spoken, men who are masons, carpenters, painters, etc., only when strike funds are being distributed. It is they who rage and urge the others on; they are the leaders in the excesses committed, in attacks on the police and on the so-called strike-breakers. This is especially true at the beginning of the strike, when the treasury is still full, and the meetings — generally held in public-

houses — with the accompanying, unavoidable indulgence in alcohol, inflame their excited minds still more.<sup>1</sup>

In order to judge aright the excesses that occur during strikes, it is essential to recognize that the psychological behavior of a crowd is entirely different from that of the individuals that compose it. The psychology of masses has been made the subject of a valuable study by Sighele.<sup>2</sup> It deals not only with the reaction of uneducated crowds to external irritations, but also with the, frequently incomprehensible, resolutions of legislative bodies, societies of all kinds, scientific and political meetings. The critical faculty of a larger number of people is not only no greater than that of each one; it, on the contrary, ceases to act altogether.

A phrase, a word, uttered at the right moment, the enthusiastic language of a good orator, a gesture made at the proper instant, may turn a perfectly orderly crowd into a rabble of criminals ready for any excess. Women being more impressionable than men, the more of them there are in the crowd, the greater is the danger, especially when alcohol brings its influence to bear on the excited people, embittered by care and deprivations, by failures and inflammatory speeches. If the spark from outside flies into this explosive mass, the mischief is done, and there follow the senseless excesses of which Hauptmann in "Die Weber," and Zola in "Germinal,"

<sup>1</sup> How clearly this has come to be recognized is shown by the conduct of the great strike in Rhenish Westphalia, where the leaders warned the workmen against any alcoholic excess. Only thus was it possible for such a big strike to be carried out so quietly and peaceably, though some credit for the orderliness may be given to the excellent party discipline. The same thing was experienced in Sweden at the time of the universal strike in 1909. Convictions for crimes of violence suddenly ceased almost entirely, thanks to the leaders' order to the workmen to stop drinking altogether.

<sup>2</sup> *Sighele*, "Psychologie des Auflaufs und der Massenverbrechen," translated by *Kurella*, Dresden and Leipzig, 1897, Carl Reissner.

have given a literary account, while Sighele has given a scientific one.

The man who takes part in such excesses may in himself be perfectly respectable and harmless, even timid, but his individuality is lost in the mass; calm consideration vanishes, and, carried away by the leveling influence of the crowd, the deliberate man becomes an excited brute. We may regret these sad consequences of the "psychology of the mass," but we cannot shut our eyes to the fact that the subjective culpability of the individual in strike disorders is often exceedingly small. The necessity for repression, however, remains unaltered by this recognition.

## PART II

### THE INDIVIDUAL CAUSES OF CRIME

#### § 11. In General

SOME authors look upon the social condition of the population as the chief cause of all crime, so much so that they believe that "putting an end to poverty is the one and only means of effectually repressing crime and prostitution."<sup>1</sup> Garofalo<sup>2</sup> looks at the matter from an entirely different point of view. He compares criminality to the sea, that, whether the tide be high or low, always contains the same amount of water. So, too, criminal inclination remains the same, and it is only the manner in which it finds expression that differs in summer and winter, in times of prosperity and in periods of need.

The truth probably lies somewhere between these two extremes. Poverty and distress is one of the sources of crime, a source that flows the more freely, the wider the circles of the population that are affected by the economic depression. But as soon as a period of prosperity sets in, another source gushes out with increased force, alcoholism and its consequences. But the criminals who sit in the dock at these two times are not the same. Prosperity does not, as a rule at least, turn the man of dishonest ways into one who stabs and disturbs the peace, nor does the hero of the street turn to theft if he is in needy circumstances.

<sup>1</sup> *Paul Hirsch*, "Verbrechen und Prostitution als soziale Krankheitserscheinungen," Berlin, 1897, Th. Glocke, p. 66.

<sup>2</sup> *Garofalo*, "La criminologie," Paris, 1895, Felix Alcan, p. 189.

At every turn of the social balance a number of individuals slip overboard and sink into the depths of crime. One thing is common to them all, the lack of sufficient power of resistance against temptation. It is the social causes that urge towards crime, but, while a large portion of mankind is able to retain its balance, another portion succumbs, sooner or later. Hence we must consider what the qualities of the individual are that weaken his power of resistance to such an extent that he becomes a criminal.

The individual causes of crime frequently overlap the social causes already discussed. It should, therefore, be clearly understood that there is often no sharply defined boundary between external and internal causes. Many individual qualities are the result of social conditions, and much that has already been dealt with, as, for instance, the fluctuations in offenses against chastity, could as well be included in what follows.

### § 12. Parentage and Training

Nothing will thrive in stony soil, and the seed need not be poor to end in failure. It is similar with the development of the criminal man. This comparison does not exclude the influence of natural disposition, but this influence cannot be separated from the bad effects of training, or rather the lack of training, and from the results of evil example and social distress.

We cannot doubt that mental disease, intemperance, and epilepsy in the parents have a degenerative influence on their children. As far as intemperance is concerned, I have already dealt with the question. The forms of degeneration are, in general, physical and mental inferiority, though experience shows that not all the children of drunkards and insane persons have these defects.

Every attempt to express this in figures is rendered futile by the elasticity of the term "heredity," some scientists regarding insanity as inherited only if it has appeared in the parents, and others being satisfied if any relative was thus afflicted; some considering a slight nervous affection sufficient, others only pronounced mental disease. It has, therefore, even been proposed to call the tendency to psychic diseases merely "family disposition."

TABLE XXII

(After Kurella.)

## DISEASE AND CRIMINALITY IN THE PARENTS OF CRIMINALS

	CRIMINALITY			INSANITY			EPILEPSY			DRUNKENNESS		
	SCHIZOPHRENIA <sup>1</sup>	MAKRO <sup>2</sup>	PERVA <sup>3</sup>	SCHIZOPHRENIA	MAKRO	PERVA	SCHIZOPHRENIA	MAKRO	PERVA	SCHIZOPHRENIA	MAKRO	PERVA
All criminals examined	43.7	8	17.6	6.7	12.6	18	1.7	2.7	8	16.2	46	30
Criminals convicted of indecent crimes . .	57.3	8	..	8.5	10.3	..	1.2	..	..	14.2	48.6	..
Perjurers . . . . .	23	..	..	..	..	..	2	1.3	..	11.1	..	..
Swindlers . . . . .	34.8	6.2	..	5.5	16.4	..	2.1	3.3	..	12.3	28	..
Thieves . . . . .	20.9	2.7	..	5.4	14	..	..	7.5	..	14	27.1	..
Murderers . . . . .	..	7.5	..	..	..	..	..	..	..	..	..	..

If it is difficult to establish the influence of heredity in those who are mentally diseased, it is much more so in criminals, who, moreover, often know little of their progenitors, and whose fathers, in the case of illegitimate children, are entirely unknown. The figures in Table XXII are given merely to show how uncertain the results of investigations of heredity are, and not as a measure of congenital disposition.

The frequency with which the psychic anomalies of the parents appear in the children, and the form they take, show

<sup>1</sup> 1714 criminals exclusive of homicides.<sup>2</sup> 507 criminals.<sup>3</sup> 560 criminals.

such variation in the figures of different writers that I will not do more than speak of the fact, without drawing conclusions from it.

Hartmann<sup>1</sup> has made a very careful study of the significance of heredity. For the purpose of comparing hereditary influences in insane and normal persons, he was able to use the studies of Diem and Koller, which, like his own, were made under Bleuler's guidance, and this has added to the value of his work. Among 199 criminals, Hartmann found hereditary defects in 69.8%, whereas Koller discovered, among 1850 insane persons, 72.2%, and, among 370 healthy persons, 59%, with inherited predispositions. But Koller, like Diem, who found, among 1192 healthy persons, 76.4% with hereditary tendencies, included apoplexy as a hereditary factor. Especially noteworthy is the difference that appears as soon as heredity in the direct line is considered — that is, through the member of the family that is most closely related — and the number of hereditary defects. When this is done, we find that criminals are nearer to the insane than to normal persons as regards direct heredity and the frequency of hereditary defects. But — and this seems to me of the greatest importance — the predisposition transmitted by the parents does not weigh as heavily as is generally supposed; the number of healthy persons who are threatened by hereditary stigmata of degeneration is too large for that.

Hartmann found inherited criminality in 32.7% of the criminals he examined, considerably more than Penta and Marro, but less than Sichart,<sup>2</sup> who found, in Württemberg, that, among 1714 criminals, 43.7% had criminal parents. Is it a question of the direct inheritance of the inclination to commit unlawful

<sup>1</sup> Hartmann, "Über die hereditären Verhältnisse bei Verbrechern" (MSchr. Krim. Psych. I. 483).

<sup>2</sup> Sichart, "Über individuelle Faktoren des Verbrechens" (ZStW. X, 36).

acts? Kurella thinks it is, but I cannot agree with him. I do not believe that we are justified in attaching too much importance to this kind of transmission, just as we should not regard as too significant the not infrequent fact that whole families, even whole localities, are distinguished by intense criminal activity. A child that is surrounded by criminals in its earliest youth soon learns to think like them, and never has the chance to develop other views. Crime loses its character as a reprehensible act, and punishment its disgrace; at most, the latter is regarded as an unavoidable disadvantage connected with the occupation. I may surely, therefore, dispense with further descriptions of the notorious Juke family,<sup>1</sup> with its widespread army of criminals, prostitutes, and defectives, or of other similar criminal families.

In Sighele's<sup>2</sup> interesting study of the former ecclesiastical State, Artena, Kurella<sup>3</sup> finds a proof of the inheritability of crime. In 1557 Paul IV outlawed all the inhabitants of Artena, the refuge of mischievous rogues, and gave anyone the right to destroy the place. Yet, as late as between 1875 and 1887, the relative number of robberies in Artena was 30 times as great as in the rest of Italy, and the number of murders, homicides, and assaults, from six to seven times as great. One of the families there, the Montefortinos, maintained its reputation for crime through three centuries. And yet even this high degree of criminality, that remained unchanged for centuries, does not prove the hereditary character of criminality itself. It may equally as well be attributed to the unfortunate force of example, that smothered good impulses before they could be developed.

<sup>1</sup> *Dugdale*, "The Jukes. A Study in crime, pauperism, disease, and heredity," New York, 1877, Putnam.

<sup>2</sup> *Sighele*, "Un paese di delinquenza" (Arch. di psich. e d'antropol. XI, 1890, p. 441).

<sup>3</sup> *Kurella*, "Naturgeschichte des Verbrechens," 1893, p. 144.



We might obtain certain proof by means of one experiment: educating the healthy children of criminals in good surroundings, in ignorance of their descent, and then observing whether they showed criminal tendencies. This proof cannot be easily secured. The occasional tales that we hear of the breaking out of gypsy instincts after years of repression may well be banished to the realm of romance; they are not to be taken seriously.

The principal reason why such experiments would not succeed is, that the children of degenerate parents, though free perhaps from congenital criminal tendencies, are so often physically and mentally inferior. Very interesting in this connection is a psychiatric study made by Mönkenmöller.<sup>1</sup> He examined 200 children in the Home for Neglected Children in Lichtenberg, belonging to the city of Berlin, among whom there were 134 that were guilty of some offense. Of the 200 boys, not fewer than 68 were feeble-minded; and even the others showed such inferior mental ability that the institution was unable to maintain a class that would correspond to the highest class in the grammar school. Besides imbecility, he found epilepsy, hysteria, mental disease; in short, after subtracting all those with mental defects, there remained only 73, including 10 epileptics, who were reasonably intelligent, and 83 normal children. Mönkenmöller adds: "And yet, as often as I recall my notes on these normal children, I cannot help thinking that even this number is too high, and that, if I could have observed them carefully for a longer period, especially if it were a question of pronouncing them responsible in the sense that the word is used in § 51 of the Penal Code, there would be still more that could not be classified under this head."

<sup>1</sup> Mönkenmöller, "Psychiatrisches aus der Zwangs-ernährungsanstalt" (Allg. Zeitschrift für Psychiatrie, LVI, p. 14).

The cause of this alarmingly large number of mentally defective children has little to do with the neglect of their training and instruction, for it is clear that those classed as imbeciles are judged, not by the knowledge they possess, but by their ability to learn. We must, therefore, regard this deficient or defective mentality as an inheritance from the parents. Mönkemöller's figures support this view. In 85 cases, either the father or the mother, or both, were drunkards; in 24, insane; in 26, epileptics; and in as many cases, afflicted with some other severe nervous disease.

In all but a few cases, the State education of these children had been ordered, because of the criminal tendencies they displayed. In view of their mental inferiority, we cannot entertain very high hopes of the success that it is possible to attain with them. But the majority of adult criminals are equally inferior in mind, which accounts for the imbecility and mental anomalies that are so common among them.

This makes it possible to dispense with the hypothesis that criminal tendencies, like artistic talents, for instance, are transmitted from parents to children. I expressly say that we can dispense with it, for it cannot be refuted or proved. The one fact that we can establish with certainty is, that the inheritance of the children of drunkards, insane persons, and epileptics consists of physical and mental inferiority.

When the children come from degenerate or criminal families, there is added to this inferiority the danger that lies in its further development.

They lack, first of all, home training. A not inconsiderable number of them are illegitimate, though the figures that would indicate just how many vary tremendously. Of the convicts that Sichart<sup>1</sup> examined in Württemberg, 27%, of those that

<sup>1</sup> *Sichart*, "Über individuelle Faktoren des Verbrechens" (ZStW. X, 36).

Guillaume<sup>1</sup> saw in the penitentiary in Bern, 14%, were of illegitimate birth. Among 413 male prisoners in Halle whose sentences were all for six months or over, I found that 8.9% were illegitimate. Experience proves this to be about the average number.

The figures given in the Prussian statistics of penal institutions<sup>2</sup> are reproduced in Table XXIII.

TABLE XXIII  
PERCENTAGE OF INMATES OF ILLEGITIMATE BIRTH

PENITENTIARIES 1891-1900		HOUSES OF CORRECTION 1896-1900		REFORM SCHOOLS 1895-1900	
MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
8.5	10.2	8.3	12.5	11.6	15.1

In 1899, 9% of all the births in Germany were illegitimate. In order to understand why a smaller percentage of the convicts are of illegitimate birth, we must remember how great the mortality is among the children that, owing to their illegitimacy, lack proper care. In Prussia, from 1875 to 1899, of 100 illegitimate children, 35.34% died in their first year, whereas among legitimate children the percentage was only 19.24. This greatly alters the proportion to the whole population of those who are of illegitimate birth. Up to the completion of the nineteenth year the percentage of illegitimate children sank from 15.65 in the first year of life to 4.1.<sup>3</sup> Thus we see that the rate of mortality continues to be higher among

<sup>1</sup> *Guillaume*, "Die Insassen der Berner Strafanstalten und ihre Jugenderziehung."

<sup>2</sup> "Statistik der zum Ressort des Kgl. preuss. Ministeriums des Innern gehörenden Strafanstalten und Gefängnisse." Berlin, Druckerei der Strafanstaltsverwaltung.

<sup>3</sup> *Klumker und Spann*, "Die Bedeutung der Berufsvormundschaft für den Schutz der unehelichen Kinder," Dresden, 1905, p. 21.

them throughout childhood. This fact should be borne in mind in judging the figures given in the table.

The unfavorable economic situation of unmarried mothers, their difficult social position, and the lack of normal family life, combine to make the training that illegitimate children receive inadequate in every direction.

TABLE XXIV

EDUCATION	PER 100 CONVICTS			
	MALE		FEMALE	
	LEGITIMATE	ILLEGITIMATE	LEGITIMATE	ILLEGITIMATE
Good . . . . .	35	9	26	5
Deficient . . . . .	54	60	52	74
Poor . . . . .	8	27	21	21
Unknown . . . . .	3	4	1	..

These figures of Guillaume's show clearly how greatly the development of illegitimate children suffers, especially in comparison with that of legitimate children. At the same time they afford us a deep insight into the education of all criminals, and show what share bad or inadequate training has in the genesis of crime. This is made most apparent by the rarity of good training among female delinquents, which seems to be almost a condition of the adoption of a criminal career.

The result of the investigation of the degree of education possessed by the inmates of Prussian penal institutions appears in the same light.

The care with which the degree of education is ascertained varies greatly in the different institutions, otherwise the comparatively low percentage of tramps, beggars, and prostitutes who are uneducated or deficient in education, directly contradicting what other experience teaches us, would be quite incomprehensible. Hence, on account of the method

used in obtaining them, the statistics of the abilities of the inmates of Prussian special State schools ("Zwangserziehungsanstalten"), at the time of entrance, are more valuable.

The disappointing result obtained by the intelligence test ("Intelligenzprüfung") among inmates of these schools shows to sufficiency how low the average knowledge, that most external of all marks of education, is, and how difficult the struggle for existence thus becomes for such children.

TABLE XXV

Schooling among the inmates of:

	PENITENTIARIES 1891-1900		CORRECTIVE INSTITUTIONS 1896-1900	
	MALE	FEMALE	MALE	FEMALE
Without . . . . .	6.9	16.5	2.8	7.2
Deficient . . . . .	52.2	51.8	8.8	11.2
Grammar School . . . . .	39.4	31.2	86.9	81.3
Higher Schools . . . . .	1.5	0.5	1.5	0.3

We shall not err in assuming that a part of these youthful offenders, even with the most careful education, would never be able to master the complete grammar school course ("Volksschule"), owing to deficient mental ability; perhaps — at least it might be so assumed from Mönkemöller's experience — this is true of the majority. On the other side, even when the mentality is low, careful individual education and training often do wonders, as is shown by observation in institutions for imbeciles, and, on a somewhat higher plane, schools for feeble-minded children. All these possibilities are seldom used in the training of those children who form the majority of early offenders.

Indeed, how can they be, when the father, and generally also the mother, work away from home from early till late,

and the children must thus be left to their ungoverned impulses and the influences of the street? It may be considered a fortunate case if the parents even attempt, in the hours that remain to them, to train the children. But even that is rare. An examining judge in Paris, Albanel,<sup>1</sup> found that, among

TABLE XXVI

EDUCATION OF MINORS ON ENTERING THE REFORM SCHOOLS  
("FÜRSORGERZIEHUNGSANSTALTEN")

(Taken from the "Statistik über die Fürsorgeerziehung Minderwertiger,"  
1908, p. 61.)

Of 100 pupils over 12 years:

YEAR	THESE HAD COMPLETE GRAMMAR SCHOOL EDUCATION	THESE HAD HIGHER SCHOOL EDUCATION	THESE COULD READ, WRITE, AND RECKON WITH FIGURES UP TO 100 SATISFACTORILY	THESE COULD READ, WRITE, AND RECKON WITH FIGURES UP TO 100 IMPERFECTLY	THESE HAD BEEN TO SCHOOL, BUT COULD NOT READ, WRITE, OR RECKON	THESE WERE WITHOUT SCHOOLING
1908	47.2	0.3	39.6	2.4	10.4	0.1
1907	44.7	0.4	40.9	3.0	10.8	0.2
1906	42.6	0.4	43.0	2.6	11.2	0.2
1905	41.3	0.4	42.2	2.0	13.9	0.2
1904	41.9	0.4	43.9	1.5	12.1	0.2
1903	39.5	0.3	43.5	2.3	13.8	0.6
1902	39.9	0.4	41.7	4.2	13.5	0.3
1901	36.0	0.2	40.3	6.8	16.5	0.2

600 criminals under twenty years of age, in 303 cases the family life of the parents was destroyed owing to death, divorce, desertion, illicit relations, or to some similar cause. What the training of children is under such conditions can be easily imagined.

In addition to evil propensity and inadequate education, the most dangerous source of the criminal attitude is the influence of environment. According to Ferriani,<sup>2</sup> of 2000

<sup>1</sup> Albanel, "Le crime dans la famille," 1900, p. 27.

<sup>2</sup> Ferriani, "Minderjährige Verbrecher," 1896, p. 76.

convicted minors, 701 came from families with bad reputations, 169 from those of questionable fame, and 53 from homes that were described as "utterly depraved." Among my prisoners 14.4% had relatives who had been convicted. I am convinced that the percentage is really much higher, for many of the prisoners questioned, intentionally or from ignorance, probably gave wrong information. Among the inmates of the corrective department for youthful offenders in the prison at Lyons, Raux<sup>1</sup> found that 13% had been directly induced by their parents to commit crimes.

Accurate statistics, however, are scarcely necessary. The simplest consideration of the subject imperatively forces us to the conclusion that only an intelligent person of particularly firm character can withstand for long the influence of a vicious environment.

Investigations of living conditions reveal a positively horrible state of wretchedness, both in cities<sup>2</sup> and in rural districts.<sup>3</sup> The living together in close quarters, even sleeping together, of adults and children, of parents and lodgers, must arouse sexual instincts at an early age. The mode of life becomes so much the more dangerous, the less restrained the passions of the adults are, — particularly so, in the case of criminals and prostitutes.

A child that grows up among thieves and vagabonds, prostitutes and drunkards, forms his range of ideas after that of those about him, and scarcely requires special instruction in order to act first as assistant, then as participant, in the execution of the family's criminal plans.

When necessity is added to all these things, the final hold

<sup>1</sup> Joly, "L'enfance coupable," 1904, p. 39.

<sup>2</sup> Elisabeth Gnauck-Kühne, "Schmollers Jahrbuch," N. F. XX, 2nd Heft.

<sup>3</sup> H. Wittenberg, "Die geschlechtlich-sittlichen Verhältnisse der evangelischen Landbewohner im Deutschen Reiche."

is lost. Of Ferriani's 2000 minor criminals, 1758 lived in miserable poverty. If this lack of means is out of all proportion to the need of necessary food, it is much more so in regard to the uncontrolled desire for comforts or luxuries. Early accustomed to drink, associating with prostitutes from the time that sexual instincts first become active, uninfluenced by school-life, and, with defective intelligence, unchecked by fear of punishment and sober consideration of the advantages and disadvantages of a criminal career, — that is the picture presented by the inner life of those who come from depraved families and corrupt environment.

The attempt to snatch a valuable member of human society out of this slough has no prospect of success, unless it is made as early as possible, before evil example has had time to exert its influence. But we may hope to see our efforts rewarded if suitable education and training is begun in very early youth, and if we can prevent the child's return to the old, miserable conditions; this, of course, within the limitations that mental and physical disposition impose. The low grade of intelligence, and the defects, such as deformity, epilepsy, hysteria, and similar things, under which degenerate children, particularly the children of drunkards, have to suffer, force them down to a lower social plane, into the ranks of the day laborers and unskilled workmen, and thus into circles in which alcoholism menaces them anew.

In spite of this gloomy perspective, everything possible must continue to be tried, in order to save at least a part of these imperilled children. We shall probably fight in vain against what is due to natural bent or disposition, but not against what is merely the external consequence of descent.



## § 13. Education

The low grade of mentality found in the average criminal dims the optimistic hopes that were formerly entertained of the good results to be obtained by increasing education among the people. It was believed that in this way even the lower classes could be given a better understanding of the necessity for, and the requirements of, a regulated legal State. "To instruct is to raise morality." Engel<sup>1</sup> sought to prove the truth of this principle by the fact, that in the Department Calvados, in France, public instruction cost 20.3 centimes per person, while justice cost 17.4; in Bouche du Rhone, on the contrary, only 16.4 centimes were expended for instruction, and 30 for justice. Thus, he asserted, every expenditure in the budget of instruction would be abundantly balanced by the savings in that of criminal justice. Levasseur's<sup>2</sup> statistics confirm this view; from 1827 to 1877 the number of those who were entirely uneducated fell, among the recruits, from 56 to 16%; among the criminals, from 62 to 31%. Thus, it appears that the uneducated show a greater inclination towards crime than the educated.

This is quite comprehensible, for his knowledge gives the educated man a great advantage over the one who is uneducated. He is able to find work, to obtain a livelihood, where ignorance makes it impossible for the uneducated man to do so. The farmer who has known how to take advantage of the progress of technical science will be able, under the same conditions, to obtain a yield from his property, even in times when the old-fashioned farmer stands face to face with ruin. The position of the uneducated man is equally unfavorable in all fields, and this increases the danger of his falling into crime.

<sup>1</sup> Cited by *Oettingen*, p. 598.

<sup>2</sup> *Ibid.*, p. 600.

The disadvantage of slight education lies in this, that the man is thus placed in a more difficult social position, is more liable to economic poverty and dependence. Thus we can understand why it is that, by simply raising the standard of education, we are by no means able to do away with any considerable number of crimes. If the intellectual level of a nation is raised, the differences still remain unchanged; the man with less education will always fall behind the man with more. In Germany, the number of the illiterate, that is, of those who can neither read nor write, has fallen extraordinarily. In 1875, among the recruits, there were still 2.37% illiterates, in 1890 only 0.5%, and in 1908 the number of those who could neither read nor write had sunk to 0.02%. The number of persons convicted, however, has increased more rapidly than the population, even as regards those crimes the legal judgments of which have not altered in all these years. Hence, in spite of increased education, we have no improvement in legal security.

No statistical proof of the influence of education on criminality can ever be brought. The simplest elementary knowledge is by no means a sign of education, intellectual attainment no measure of the development of altruistic ideas. But — and this too, unfortunately, needs to be expressly mentioned — there can also be no proof to the contrary. The simple, childlike view, that the degree of education obtained in the lower schools menaces the harmless, deeply moral, mode of thought of the people, this sentimental glorification of the people in their primitive state, is based on entirely vague and unfounded prejudices. It is not increasing education that causes the growth of crime, but the changes that have taken place in all external conditions in the course of the last centuries.

If instruction has any influence at all on criminality, this

influence probably shows itself in the kind of crime committed. It is clear that no illiterate can forge documents, nor commit a crime in office ("Verbrechen im Amte"). A complete failure to perceive the cause and the accompanying phenomenon must have led Lombroso<sup>1</sup> to say: "However, if education is valuable for the population in general, it nevertheless ought not to be extended to the inmates of prisons, unless it is accompanied by a special training, designed to correct the passions and instincts, rather than to develop the intellect. Elementary education is positively harmful as applied to the ordinary criminal; it places in his hands an additional weapon for carrying on his crimes, and makes a recidivist of him. The introduction of schools into the prison . . . explains, to my mind, the great number of educated recidivists." And in another place:<sup>2</sup> "To instruct the criminal means to perfect him in evil"! Not because of instruction, but in spite of it, the relapse takes place. Without doubt, the technical knowledge that a criminal has obtained in prison may be of use to him in a burglary or a falsification; but it is then just as certain that, without these newly acquired capabilities, he would have relapsed. To many others, however, the knowledge gained in prison, and the training in some trade, have meant the possibility of getting on better in the world after their discharge, and in this way, some, at least, have been preserved from an otherwise certain relapse into crime.

Knowledge and capabilities are always a mighty protection and a strong weapon in the struggle for existence, but only for the individual. The general increase in education, especially within the limited sphere of the average grammar school instruction ("Volksschulunterricht"), can have no appreciable effect on criminality.

<sup>1</sup> Lombroso, "Crime: Its Causes and Remedies," p. 114; "Modern Criminal Science Series," 1911, Horton, trans.

<sup>2</sup> *Ibid.*, p. 301.

## § 14. Age

The actions of youth bear the stamp of impulsiveness, which boldly approaches too difficult tasks. With increasing age caution and prudence grow, developing in old age into deliberation and wise resignation. To what extent do these psychological stages of development appear in criminality? Above all, how does the child develop into a personality responsible to the State?

Our German Penal Code, like the penal codes of all European countries except those of France and Belgium, starts with the assumption that criminal responsibility develops gradually.<sup>1</sup> From the time when the first distinct signs of conscious reaction to the provocations of the external world become noticeable, the whole activity of the child is purely egoistic. It is dominated by the needs and desires of its own body, and to fulfill these the child strives with naïve inconsideration of others. But soon training begins its work at home and at school. Dix<sup>2</sup> calls the home "the most important foundation of the entire social milieu." As far as the development of altruistic modes of thought are concerned, I am inclined to attach still greater importance to the school than to the family. The school must not and cannot take the place of the home, but, within the close circle of family life, training and education are, after all, only possible to a limited extent, because encroachments on others' spheres of interest can be but slight in nature. Companionship with others of the same age in school, however, entails innumerable conflicts which arouse in the child the indistinct desire to have his interests protected against others, and also awaken in him

<sup>1</sup> Compare my discussions of: *Strafunmündigkeit und relative Strafunmündigkeit in Hochs*, "Handbuch der gerichtlichen Psychiatrie," Berlin, 1901, Hirschwald.

<sup>2</sup> Dix, "Sozialmoral," Leipzig, 1898, Freund & Wittig, p. 17.

an understanding of the necessity of adapting himself to others, to his surroundings, we might say, to the State on a small scale.

At first, the child learns to obey without comprehension, from fear of punishment, from imitation, but soon his understanding grows, and gradually he learns to overcome his own selfish impulses and pay attention to the interests of others. Right and wrong become definite notions, motives; their distinctness and their weight finally grow to the degree that constitutes responsibility to the law.

This development naturally takes place but slowly, step by step, and, just as naturally, is not equally rapid in all children. This fact corresponds to the need of gradation, the division in our law into persons below the age of punishment, those relatively unpunishable, and those punishable.

Up to the completion of the twelfth year the child is free from punishment. Unfortunately, we have no means of knowing the frequency with which children commit anti-social acts of a criminal nature. They are probably not rare, as the period up to twelve years embraces about one-third of the civil population, though, of course, the very small children must be deducted from this number. Whether it would be easy to meet the demand for criminal statistics of those under the age of punishment, the desire for which is also expressed by Appelius,<sup>1</sup> cannot be said offhand. I consider it possible, with the co-operation of all the authorities concerned (school, police, and courts), to obtain at least an approximate summary of the danger to legal security through children.

Of the "juveniles," as those between the ages of 12 and 18 are called in criminal statistics, only those are punished who are able to understand the nature and consequences of their

<sup>1</sup> *Appelius*, "Die Behandlung jugendlicher Verbrecher und verwahrloster Kinder," Berlin, 1892, J. Guttentag, p. 11.

act. In the choice of this expression, it was probably overlooked that it leaves a wider margin than is desirable to the subjective opinion of the judges. This is best seen in the frequency with which juveniles are acquitted in conformity with § 56 of the Penal Code. From 1897 to 1899 the number of such acquittals, among 46,328 juveniles, was 1591, that is, 3.4%.

This percentage was reached and exceeded by twelve of the appellate provincial courts ("Oberlandesgerichtsbezirke"), Cologne having 10, and Kolmar 9.8%; a number of the others fell quite below the average; thus, Dresden (1.4%), Oldenburg (1.3%), Zweibrücken (1.1%). The two districts, Cologne and Dresden, show about the same number of convictions, as well as of sexual crimes; Cologne's excess of cases of assault and battery balances the greater number of thefts in Dresden. In order to explain the difference in the number of acquittals based on § 56, we are compelled to assume that the judges in Cologne required a higher degree of comprehension than did those in Dresden.

A comparison of juvenile offenders, between the ages of 12 and 14, acquitted on the ground of insufficient comprehension, gives the same result. For every 100 of these convicted in all Germany from 1894 to 1896, there were 10.8% acquittals. Of the six appellate courts that reached or exceeded this percentage, Kolmar stands at the head with 57.1%, followed by Cologne with 32.2%. Acquittals were rarest in Brunswick (0.5%), next in Oldenburg (3.1%), and Dresden (3.3%).

It is perfectly justifiable to attribute much of this variation to the difference in the crimes, and also in the mental development of the population in the various parts of Germany. Enough remains, however, to force us to the conclusion that there is no uniformity and agreement as regards what is to

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be understood under "the comprehension of the criminal illegality of an act."

The overburdening of certain courts, unfortunately, makes it necessary to dispose of the individual cases in too short a time, and this makes it almost impossible to avoid a certain regular system which makes use of purely external criteria, like age and physical development. But the method of treatment in England and Ireland, as cited by Ernst Schuster,<sup>1</sup> can only be stigmatized as an absolute mockery of the words and intention of the law: "criminal responsibility begins after the completion of the seventh year; with children from 7 to 14, according to the theory, proof must be given that they are sufficiently mature to be able to distinguish between right and wrong. In practice, however, such maturity is always assumed in children over ten years!"

If the comprehension necessary to the perception of the criminality of an act, the "discernment" of the French, were merely subject to the error of different interpretations, that might, perhaps, be overlooked. But the term is subject to the greater error of one-sidedness as well. It demands only a definite degree of intellectual development. In general, the development of moral education runs parallel to that of intellectual development, but self-control does not grow with the intellect. This is best seen in the kind of crimes most frequently committed by juvenile offenders.

In the first place, the high number of youthful offenders convicted of crime is striking, as we cannot fail to take into consideration that a large percentage of them enjoy the protection of the parental roof for some of the years in question. It is the more surprising, then, to find that in certain crimes

<sup>1</sup> "Die Strafgesetzgebung der Gegenwart in rechtsvergleichender Darstellung," Berlin, 1894, Otto Liebmann, I, p. 626.

the number of convicted children still of school age exceeds that of the adults.

Very rarely in early youth will a child always be able to resist the temptation to take sweets and such things on the sly; it is generally just on such an occasion that the difference between mine and thine, forbidden and not forbidden, is made clear to him. Criminal statistics show us, however,

TABLE XXVII<sup>1</sup>

CONVICTED IN 1901 OF:	PER 100,000 CIVILIANS FROM		
	12 TO 14 YEARS	14 TO 18 YEARS	18 YEARS AND OVER
All crimes and offenses . . . . .	405.2	919.1	1361.7
Petit larceny . . . . .	230.4	339.4	208.4
Grand larceny . . . . .	47.8	65.0	28.2
Receiving stolen goods . . . . .	14.7	19.7	19.7
Fraud . . . . .	9.7	41.3	70.6
Simple assault and battery . . . . .	3.7	25.1	79.1
Aggravated assault and battery . . . . .	24.9	167.2	274.5
Malicious mischief . . . . .	30.2	57.2	48.3
Insult . . . . .	2.6	29.2	165.5
Indecent assault on children, etc. . . . .	3.5	21.2	12.6
Arson . . . . .	2.1	2.6	0.9

that these teachings are obviously much more easily followed by adults than by children. The temptation to enrich himself at another's cost is considerably increased by the fact, that the child has fewer ways and means of procuring money honestly than the grown person.

The increasing love of enjoyment that no longer finds sufficient food in harmless games craves gratification; if the necessary means are not at hand, they become the motive for stealing, a motive against the power of which reason often fights in vain. The character lacks the maturity to conquer the temptation, which often, also, approaches from without in

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. CXLVI, II, p. 50.



the form of good friends; the youthful optimism makes light of the danger of being caught; all these things combine, and the thief is there. And, with the thief, the receiver of stolen property, not, of course, the professional, at least, not at once. At the beginning, it is the companion who perhaps first suggested the theft and in return shares in the booty. Fraud, which requires more intelligence and deliberation than does the theft, that is carried out more boldly than cunningly, is rarer.

Assault and battery and malicious mischief form a second group of offenses. Although the number of convictions for the former is considerably lower than the number of adult convictions, yet it must not be forgotten that, in the etiology of this crime, the public-house plays the principal part. Fortunately its portals are not yet customarily open to minors. It must be admitted, however, that in this respect too regrettable progress is noticeable. While the number of those of punishable age convicted of this offense increased from 1882 to 1901 by 84.3%, the number of convicted minors increased by 130.1%!

The minor responds relatively easily to provocation by brutal violence; this is best shown by a comparison of the number of cases of aggravated assault and battery with the convictions for insult, which are very similar in the case of adults. The young fellow, on the contrary, is apt to wreak his anger on inanimate things, smashing everything within reach, but at the same time he does not shrink from attacking others with a stick or knife. Thus, it is his physical strength, the awakening of which he notices with pleasure and seeks to train in athletic clubs and gymnasiums, that is the main incentive to the offense that is second in frequency with him. His first drinking escapades, which also occur during these years, are naturally so much the more serious

because, unaccustomed to alcohol as he is, he has not yet learnt by experience to be moderate.

In general, sexual development does not take place with us till in the fourteenth or fifteenth year, or even later, so that, for physiological reasons, a very large number of minors do not come under consideration as regards sexual crimes. In spite of this fact, the number of convicted children under fourteen nearly reaches a third of the adults' share. This fact appears in a still graver light when we take into account that, generally, more than half of the children arraigned for such offenses are acquitted on the ground of insufficient comprehension. From 1899 to 1901 the number of convictions amounted to 288, the number of acquittals, based on § 56, to 355 among children under 14 years. Thus, for every three cases of rape among adults, there are two cases among children, of whom only a very small number are sufficiently developed sexually to commit the crime. This gives us a measure for the strength with which sexual instincts appear from the beginning; between the ages of 15 and 18 they make criminals of nearly double as many persons as among the physically and mentally mature.

When it first appears, the sexual instinct finds little to check it. The reticence towards children that people cultivate in regard to sexual subjects results in this, that the child's intellectual development leaves him absolutely in the lurch in regard to this very matter. His feelings, neither clear nor comprehensible even to himself, yet often extraordinarily powerful, do not meet, in their striving for gratification, with a closed phalanx of prohibitions and warnings. But even if such existed, the strength of the desire for sexual gratification is greater than that of the reason. We see this every day, even with grown people, who are not hindered by the full knowledge of the dangers of intercourse with prostitutes from

exposing themselves again and again to the probability of a serious injury to their health. How much less can reason achieve with children!

Adults, even those who are unmarried, can more easily obtain opportunities for sexual intercourse than can minors. This also increases the danger and makes it comprehensible why children are so largely concerned in sexual crimes. The stormy outburst of the sexual impulse breaks through and obliterates the boundaries of the legally permissible.

The crime of arson occupies a peculiar position. In the country it is frequently committed by servants from motives of revenge. Commonly the young man or girl is irritated by a scolding or a blow, and his or her anger gives rise to the wish to be dismissed or to play some trick on the master. A tempting means of accomplishing this is the barn, and it is probable that the pleasure which many people experience in watching a blaze is also not without influence. Whether this process can take place in a perfectly normal brain, would certainly be worth a more exact investigation, for which my material, unfortunately, is inadequate. Nevertheless, it can scarcely be chance that five of the six young girls convicted of arson, whom I examined carefully in the course of a year while they were in prison, were unusually weak minded, only one being of normal intelligence. In every case the court had assumed the child to be capable of comprehending her act, and in some instances had imposed really severe penalties.

I cannot refrain from referring to still another experience. Epilepsy, arson, mysticism, cruelty, and sexual excitement, are all interrelated; even though the psychological root of this relation is entirely unknown to us, yet the frequency of this combination points to deeper connection, which probably borders on the pathological. I would not be understood as saying that every one of these factors is found in every case of

arson, but it is, nevertheless, advisable to consider the possibility of a pathological origin of the crime; it seems to me to be absolutely necessary to investigate this whole question with the aid of a careful analysis of numerous cases.

Apart from cases of arson, we have still three main groups of crimes committed by juveniles: crimes against property, crimes of violence, and crimes against chastity. This combination sufficiently proves that legislation is guilty of one-sidedness, in that it lays the emphasis precisely on the development of the understanding. Those impulses and instincts that we have mentioned as being stronger and less disciplined among juveniles than among adults, are not all with which we have to reckon; to these must be added at least the greater excitability of the emotions, and the desire to imitate.

The dangers of the youthful period of development are the more serious for public safety, the greater the extent to which the growing generation participates in the struggle for existence. If it be true that many crimes have their origin in external circumstances, this must show itself the more clearly with minors, the earlier and the more numerous they leave the protection of the paternal roof to work in factories.

Our statistics give information in regard to the displacement ("Verschiebung") of industrial conditions.<sup>1</sup> It is not so great as is generally supposed. It is true that in the last census of occupations in 1895, 21.18% of those engaged in gainful occupations were under 20, in 1882 only 19.99%. But only certain isolated kinds of occupation are concerned in this increase, to the greatest extent those that provided board and lodging (22.00 : 14.63%), building trades (21.16 : 16.47%), metal industries (28.90 : 24.51%), and commercial occupations (16.87 : 13.64%), while in agriculture and forestry, as well as in

<sup>1</sup> "Die berufliche und soziale Gliederung des deutschen Volkes" (Statistik des Deutschen Reiches, N. F. III, p. 151).

mining, the proportion of those under 20 has remained exactly the same. Thus, although the number of youthful workmen in the country has undergone no change, the increase in the number of minors in factories and in hotels and public-houses is most clearly seen. The following figures may serve to show how frequently minors are engaged in gainful occupations: in 1895 there were 4,006,317 persons under 20, 1,097,358 under 16, and 146,290 under 14, who were thus independently at work; no account is taken of those who worked only occasionally.

TABLE XXVIII<sup>1</sup>

Convictions per 100,000:

YEAR	ADULTS	MINORS
Between 1882 and 1886 . . . . .	1097	564
Between 1887 and 1891 . . . . .	1120	618
Between 1892 and 1896 . . . . .	1281	707
Between 1897 and 1901 . . . . .	1298	733
Between 1902 and 1906 . . . . .	1321	736

The figures of criminal statistics do not prove by themselves that the effect of the greater participation of minors in industrial life is injurious. But one thing cannot fail to be recognized: the number of persons under 18 who are convicted is increasing more rapidly than the number of convicted grown persons.

The increase among adults (20.4%) is considerably less than that among minors (30.5%). Since reaching its climax in the year 1892, however, the number of convicted minors diminished somewhat up to 1897. Now, as industrial life has made a tremendous advance since that very year, and, consequently, the whole number of workmen employed, and

<sup>1</sup> Reckoned from "Stat. d. Deutschen Reiches" (N. F. CXLVI, I, 35 and 36).

also the number in proportion to minors, must have grown, it might almost appear as if crime was rather prevented than furthered by the entrance of young people into industrial life.

Von Liszt,<sup>1</sup> contrary to his former opinion, has lately advanced this view, and has formed the hypothesis: "Under favorable economic conditions, and when the demand for workmen is high, a number of youths are employed in factories as substitutes for grown workmen. There their situation is assured to a certain extent by legislation for the protection of workmen, much more, indeed, than it would be today at least, if they were engaged in home industries. When the economic situation becomes less favorable, the boys employed in the factories are the first to be dismissed and turned into the street. They have lost the means of earning their livelihood and are no longer able to satisfy the new tastes and habits they have formed, so that social shipwreck is bound to occur."

Unfortunately, this optimism, that sees in the temporary diminution of criminality since 1892 a ground for the conclusion that the industrial activity of minors is beneficial, does not seem to me to be entirely justified. Here, too, it is necessary, in order to see clearly, to separate the whole number of crimes into the different offenses. We then see (Table XXIX) that it is only the decrease in the thefts that leads us to believe in the improvement. Otherwise, we find that in reality an alarming increase in the convictions of juveniles has taken place, and in particular, precisely in their most characteristic offenses, with the exception of theft, which has increased only 8%. Aggravated assault and battery has increased 123% per 100,000 juveniles, breach of the peace 128.6%, insult 105%, resisting an officer 50%, malicious mischief 55%.

<sup>1</sup> *Von Liszt*, "Die Kriminalität der Jugendlichen." Lecture delivered before the Rheinisch-Westfälischen Gefängnisgesellschaft, 1900.

fraud and embezzlement 40%, offenses against chastity 19%.<sup>1</sup>

In most of these crimes the increase is a perfectly regular and uninterrupted one. These figures prove how dubious the participation of minors in industrial life is; the boy who early

TABLE XXIX

PERSONS CONVICTED PER 100,000 MINORS OF THE CIVIL POPULATION  
(Statistik des Deutschen Reiches, N. F. CXLVI, I, 104.)

	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894
Resistance to State authority . . . . .	4	5	5	5	4	6	4	5	5	5	5	6	7
Breach of the peace . .	7	6	9	7	9	8	8	8	11	11	12	12	14
Crimes and offenses against chastity . . .	16	13	15	15	15	16	15	16	17	18	19	19	22
Insult . . . . .	10	10	12	13	13	13	13	13	16	15	17	19	20
Simple assault and battery	12	12	14	14	14	14	12	14	17	17	18	19	19
Aggravated assault and battery . . . . .	48	49	60	63	67	68	66	70	77	73	84	92	95
Petit larceny . . . . .	284	271	275	256	259	258	255	261	296	296	323	276	229
Petit larceny when repeated . . . . .	13	13	13	11	11	11	11	11	11	12	13	13	14
Grand larceny . . . . .	43	39	40	39	36	39	40	46	50	50	56	50	52
Grand larceny when repeated . . . . .	4	4	4	4	4	3	3	3	4	4	5	4	5
Embezzlement . . . . .	26	26	26	25	27	26	25	25	30	30	33	33	33
Fraud . . . . .	30	21	21	21	22	23	23	27	28	29	32	27	29
Malicious mischief . . .	31	27	31	33	30	34	32	34	49	38	40	41	45
All crimes and offenses against national laws .	568	549	578	560	565	576	568	614	663	672	729	686	716

in life is able to earn the means of "enjoying his life," pays for this enjoyment by losing his blameless reputation.

Only one point contradicts this, the relative stagnation of the convictions for theft. In the first year included in the statistics, 1882, the industrial situation was unfavorable (compare p. 110); this corresponded to the high number of thefts, that was not equaled again until the years 1890-1892.

<sup>1</sup> The last figure is no doubt most influenced by the evident increase in acquittals on the ground of § 56 of the Penal Code, the result of which acquittals is to give an outwardly favorable aspect to the criminality of juveniles.

From then on, the improvement is noticeable, corresponding to the lower prices of grain and the higher wages that came with the industrial high tide. The improvement of minors, however, owing to their greater psychic sensibility, remains considerably below that of adults. With increased prosperity,

TABLE XXIX — (Continued)

PERSONS CONVICTED PER 100,000 MINORS OF THE CIVIL POPULATION  
(Statistik des Deutschen Reiches, N. F. CXLVI, I, 104.)

	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906
Resistance to State authority . . . . .	7	8	7	8	8	7	7	7	6	6	7	6
Breach of the peace . .	14	14	14	16	17	16	16	17	17	16	18	18
Crimes and offenses against chastity . . .	21	21	18	19	19	19	20	20	22	20	20	19
Insult . . . . .	19	19	19	20	19	20	20	21	20	21	20	21
Simple assault and battery	21	20	18	18	19	19	18	18	17	17	17	18
Aggravated assault and battery . . . . .	98	102	98	108	113	113	117	112	109	109	106	107
Petit larceny . . . . .	278	271	281	293	279	290	284	283	283	279	291	304
Petit larceny when repeated . . . . .	13	13	12	13	11	12	11	10	9	8	7	7
Grand larceny . . . . .	50	52	52	57	55	55	55	59	55	53	59	66
Grand larceny when repeated . . . . .	5	4	4	4	4	4	4	4	3	3	3	2
Embezzlement . . . .	34	33	33	35	34	34	32	33	32	33	33	35
Fraud . . . . .	29	27	30	30	30	30	30	28	28	27	27	28
Malicious mischief . . .	41	46	45	47	50	46	48	49	48	46	47	48
All crimes and offenses against national laws .	702	702	702	744	733	745	739	740	726	715	733	764

their needs grow, and, unfortunately, not their thirst for knowledge and higher forms of amusement only. The public dancing hall and the saloon grow to be habits of life all too early; the sad consequence appears in the increase of crimes of violence.

But what may happen if hard times again succeed the present prosperous period? It is always dangerous to prophesy, but, still, I consider it necessary to prognosticate the coming years. If it should come true, it may be considered as a test of the correctness of the views I have just advanced. The



industrial crisis will bring about a drop in wages and a greater number of dismissals. These dismissals will first affect the youthful workmen and those who are physically and mentally inferior. A part of them will seek to obtain by dishonesty what their lack of employment prevents their obtaining otherwise, the necessities of life; also, however, the gratification of their habits. If, in addition, the price of grain should actually rise, I assume, with Seuffert<sup>1</sup> and von Liszt, that we shall have a remarkable increase in the number of thefts.

I have allowed the above paragraph to stand as I wrote it in 1905. In the meantime, statistics have shown that my prognostication was right. The figures for theft, and also those for the total criminality, have risen to a hitherto unequaled height, and thus, also, a considerable part of our dangerous youths have been restrained from exercising their criminal inclinations by corrective training ("Fürsorgeerziehung"). That this has its effect, is shown by the decrease in the number of convictions for offenses other than the first.

The economic crisis will have a favorable effect on the crimes of violence, possibly even cause a halt in the uninterruptedly rising line, but will scarcely cause it to descend perceptibly. The years 1889-1892, with their high price of bread, also raised the number of thefts, but were not able to check the rise of the crimes of violence.

If we look into the future, the prospect is not bright, but one thing gives us a glimmer of hope. The corrective-education law ("Fürsorgeerziehungsgesetz") of the individual States — which it is to be hoped will soon give way to a law for the whole Empire — gives the State and the authorities (parents can scarcely be considered), a welcome means of preventing endangered and dangerous juveniles from living at large and uncontrolled in society. If all the authorities

<sup>1</sup> *Loc. cit.* p. 27.

concerned do their duty, and provide for every child that has come into conflict with the criminal law, and whose home offers no guarantee for improvement, a tremendous external improvement in the criminality of our boys and girls will be attained; if, in addition, all those children are included who are in danger of falling, we can be sure of success.

How far this success will go, the future alone can show. Its perfect completeness, that is, the real improvement of these children, that will make of a neglected child a useful member of human society, will probably often remain a "pium desiderium." But the gain is still great if all these dubious elements are only rendered innocuous for a few years, in particular for those years in which criminal perils are particularly strong.

Youth resembles a very sensitive instrument, the functions of which suffer from even the gentlest external touch. That is true not alone for juveniles of the Penal Code: even older boys and girls of from 18 to 21 show but little ability to resist temptations of all sorts. Table XXX shows the share of each age in relation to the total number of responsible persons of the same age.

It is worth while, in this respect, to consider the two sexes separately. Among young men of from 18 to 21, the most frequent crimes are: offenses against chastity, petit and grand larceny, receiving stolen goods and forgery, robbery and extortion, and, oftenest of all, malicious mischief, — the same crimes, that is, as those committed by juveniles. The years from 21 to 25 show the greatest participation in crimes altogether, manslaughter, breach of the peace, simple assault and battery, fraud and embezzlement. Thus we see that at this age, to the emotional crimes and dishonesty are added, in growing numbers, the crimes requiring deliberation, like fraud and embezzlement; the character of the crimes of violence, if one may say so, becomes somewhat more harm-

less, breach of the peace taking the place of malicious mischief, and simple assault and battery that of aggravated assault and battery. Between 25 and 30 the climax is reached for murder, for coercion and threats, and also for procuring women for prostitution; at this age the procurer thrives. With advancing age deeds of violence grow less, and, probably in connection with the occupation, the offenses that come into the foreground between 30 and 40 are breaking out of jail and insult, while between 40 and 50 it is violation of oath that becomes prominent.

The weakening body becomes unfit for all those crimes in which physical strength and skill are necessary; there is less energy, and finally, in advanced age, but little crime occurs. Thus, for instance, while grand larceny reaches its highest point between the ages of 18 to 21, after the seventieth year it sinks back to the 150th part, in relation to the same number of responsible persons of the same age. So much the more striking is the high number of convictions for indecency and rape, which at this age nearly equals the fourth part of the convictions of young men in the most vigorous age (18-21). It should be distinctly emphasized here, that, with few exceptions, such cases are due to pathological conditions. In our climate sexual desires usually cease at sixty years; it is very rare for them to be found at a great age. Every man over seventy who is guilty of such an offense should be made the subject of a psychiatric report; in that case most of them would not find their way into prison, but into the insane asylum or home for the aged, where they rightly belong. Among all those whom I have come across I have not found one who was mentally sound; in every case there was pronounced senile decay.<sup>1</sup> This view is also supported by the

<sup>1</sup> *Aschaffenburg*, "Zur Psychologie der Sittlichkeitsverbrecher" (MSchr. Krim. Psych. II, 404).

TABLE XXX  
CONVICTS 1886-1895 PER 100,000 CIVILIANS OF THE SAME AGE AND SEX  
("Statistik des Deutschen Reiches," N. F. LXXXIII, II, pp. 96 and 97.)

	CRIMES AND OFFENSES AGAINST NATIONAL LAWS EXCEPT EMBROID- ERY OF MILITARY SERVICE	RESISTANCE TO OFFICERS	BREACH OF THE PEACE	VIOLATION OF OATH	SEXUAL CRIMES, RAPE	INDUCING WOMEN TO PROSTITUTION	INSULTS	SHAMELESS ASSAULTS AND BATTERY	AGGRAVATED ASSAULTS AND BATTERY	PEACE LAMENCY, ALSO WHERE REPEATED	GRAND LAMENCY, ALSO WHERE REPEATED	EMPLOYMENT	RECEIVING STOLEN GOODS, ALSO WHERE REPEATED	PEACE, ALSO WHERE REPEATED	MALICIOUS MISCHIEF
Male convicts . . .	1847.05	77.45	90.38	6.33	90.63	5.51	904.36	118.30	356.36	322.49	57.95	80.97	93.31	88.06	80.37
13 to 15 years . . .	1093.72	8.12	19.28	0.55	94.93	0.25	82.25	92.72	149.69	418.46	99.40	46.66	93.52	83.79	70.55
16 " 21 " . . .	3291.04	190.50	159.45	7.94	94.94	2.79	127.32	193.18	1012.65	698.08	149.71	133.49	399.89	134.98	297.90
21 " 25 " . . .	3227.59	172.89	191.04	8.09	97.43	3.76	197.59	243.94	998.09	614.93	107.83	142.89	30.51	164.28	170.39
25 " 30 " . . .	3998.12	161.84	171.42	9.94	94.94	11.39	265.40	290.03	945.37	445.03	78.45	154.53	34.09	196.03	118.99
30 " 40 " . . .	3229.15	111.02	131.49	9.33	10.66	8.68	284.19	163.03	339.35	365.87	44.31	105.77	52.54	119.45	76.94
40 " 50 " . . .	1651.32	68.33	81.93	9.54	15.99	5.73	316.35	102.10	194.59	272.03	23.04	71.32	93.94	83.27	46.04
50 " 60 " . . .	1063.39	35.57	45.77	8.93	13.26	3.51	294.75	53.61	116.90	194.03	13.99	41.32	90.61	49.71	26.30
60 " 70 " . . .	571.75	15.64	21.25	5.55	11.90	1.87	132.03	24.94	58.56	192.73	5.01	90.37	11.56	94.05	13.51
70 years and over . . .	287.55	5.53	8.06	2.55	8.73	0.65	51.08	9.51	21.97	45.71	0.97	7.57	3.88	9.04	7.57
Female convicts . . .	380.42	5.90	12.25	2.31	0.15	7.93	69.52	15.71	25.99	132.25	7.19	18.55	16.35	19.50	4.35
13 to 15 years . . .	329.56	0.76	1.46	0.45	0.28	0.13	7.34	4.19	6.16	151.25	9.53	11.47	4.10	17.69	2.97
16 " 21 " . . .	443.59	4.73	6.68	2.52	0.30	1.19	30.80	7.13	19.97	232.03	15.14	26.06	8.98	39.93	5.24
21 " 25 " . . .	443.58	7.66	9.16	2.78	0.34	4.49	34.93	15.40	28.35	184.70	12.46	25.33	12.40	33.02	5.73
25 " 30 " . . .	495.41	9.04	13.51	2.68	0.11	10.40	33.50	19.50	37.78	160.59	9.46	24.76	16.50	36.33	6.90
30 " 40 " . . .	283.66	9.39	20.30	2.55	0.09	14.08	114.07	23.94	43.85	140.83	94.00	23.74	23.74	30.64	6.75
40 " 50 " . . .	493.40	8.76	22.30	2.80	0.08	13.16	119.06	18.99	33.31	118.39	4.70	30.79	31.03	16.54	6.17
50 " 60 " . . .	314.74	5.59	14.79	2.59	0.05	7.95	81.66	10.73	23.81	76.03	2.25	12.10	19.69	9.85	4.46
60 " 70 " . . .	153.03	2.03	5.97	1.44	...	3.51	40.97	4.74	10.71	39.96	0.86	5.53	7.98	4.67	2.23
70 years and over . . .	55.25	0.95	2.95	0.66	...	0.79	15.96	1.59	3.70	14.66	0.13	1.53	2.77	1.35	0.79

fact, that most of these old men have led blameless lives. Among the 303 men of 70 years and over who were convicted between 1897 and 1899, 216 had never before been punished!

Among women the conditions are slightly shifted; a very dangerous age with them is between 18 and 21, when all kinds of crimes arising from dishonesty, especially petit and grand larceny, embezzlement, fraud, and forgery are committed. Between the thirtieth and the fortieth year violence reaches its climax, especially assault and battery, resisting an officer, malicious mischief, and inducing women to prostitution. Instead of the men-procurers, we have the women keepers of brothels, and landladies, who maintain the number of convictions almost at the same height even for the next decade. To these, however, are added, also, the insults and breaches of the peace that frequently result from quarrels in tenement houses, violation of oath, coercion, and, finally, receiving stolen goods. Whereas, among boys, it is generally a comrade who acts as the receiver, among girls it is often an aged woman who makes a business of the practice, and — unfortunately — it is frequently the mother who receives the goods and supports her children in their thieving.

According to Quetelet,<sup>1</sup> "the inclination to steal is earliest developed, and, in a manner, controls the man all his life. It is first active in the family circle, and thus thievery in the household is developed. Then the youth also turns his attention to other spheres, sometimes resorts to violence, and does not even stop at murder. This latter phase, however, is preceded by the inclination to carnal crimes, that is so strong in youth, and that goes hand in hand with the heat of desire and the excesses that accompany it. The youthful criminal first seeks his victim among those least capable of resistance.

<sup>1</sup> *Quetelet*, "Physique sociale ou essai sur le développement des facultés de l'homme," 1869, II, p. 306.

He then comes to the crimes that are committed with calm deliberation. The man who has become cooler simply destroys his victims by murder and poison; the last phase is characterized by deceit and cunning, which take the place of strength. Avarice awakes anew and leads the criminal to falsifications; now he seeks to strike his enemy in the dark. If sexual desires still exist, such men seek their victims among weak children; to this extent there is a certain similarity between the first and the last steps in the career of crime."

This description does not entirely agree with German statistics and is apt to produce a false impression, inasmuch as it is very rare to find an individual who has led the whole, or even a part, of this criminal career. The distribution over the different ages corresponds much more to the different stages of physical and mental development and the way in which they are influenced by the external conditions of life. A young fellow, when he steals, is much more likely to depend on his physical agility than an older man is, and the latter, therefore, prefers to steal only when opportunity offers, or to depend more on fraud and embezzlement. For the same reason, when he quarrels, he will rather rest satisfied with mere verbal abuse than try his strength with the other; in this connection it must also be taken into consideration that alcoholic excesses, except where habitual drunkards are concerned, decrease with advancing age.

The whole method of considering ages does not, nevertheless, afford us a deep insight into the etiology of crime, except in the case of the very young, and, to a certain extent, the very old. But what experience with juveniles teaches us is so much the more important and instructive, because it shows us what dangers attend the age of adolescence, and where the lever must be applied in order to keep the annual crowd of juveniles from the first step in a criminal career.

## § 15. Sex

The criminality of men and women shows remarkable differences (Table XXXI). Certain offenses, except as regards being an accessory, which is relatively rare, are only possible for one of the two sexes because of their nature, as, for instance, infanticide (§ 217) with women, dueling, illegal marriage, rape, avoiding military service, with men. The abandonment of children and criminal abortion are also, for obvious reasons, more frequent among women. Apart from the fact that in most cases it is the woman who has to bear the greater care of the new or unborn, generally illegitimate, child, it is probably much easier to prove a woman's participation in a case of abortion than a man's. On one point we must not deceive ourselves: the number of convictions for this crime bears no relation whatever to the frequency of the offense; it merely shows, as Lewin<sup>1</sup> says, "the greater or lesser skill with which abortion is concealed."

Convictions for procuring women for prostitution are strikingly frequent among women. This is partly due to the fact that prostitutes are much more inclined to help their men companions out of a dilemma in court than they are to aid the women who keep brothels or rent rooms. But we are not justified in taking this offense all too seriously. Frequently the women concerned keep houses for registered prostitutes, — hence, with the consent of the police. If such a woman offends a neighbor, who is probably no better herself, the latter may report the case, and the public prosecutor is then obliged to proceed, and the court to convict! As regards this offense, too, it need scarcely be repeated (compare p. 96) that the rarity of conviction is out of all proportion to the frequency of the crime.

<sup>1</sup> *Lewin, loc. cit.* p. 20.

In all other offenses women's criminality is far below that of men. The woman thief and receiver of stolen goods is comparatively frequent. Apparently that is the kind of dishonesty that their nature and manner of life make most easily possible to them. They lack the physical skill and the

TABLE XXXI

NUMBER OF ADULT WOMEN CONVICTED IN 1909 PER 100 ADULT MEN  
CONVICTED

Inducing women to prostitution (for the year 1907) . . . . .	75.6
Receiving stolen goods . . . . .	46.9
Prison breach . . . . .	37.8
Perjury . . . . .	36.1
Insult . . . . .	36.1
Petit larceny . . . . .	31.4
Embezzlement . . . . .	19.3
Forgery . . . . .	19.2
Murder . . . . .	18.6
Fraud . . . . .	17.0
Extortion . . . . .	15.9
Arson . . . . .	15.9
Manslaughter . . . . .	14.5
Simple assault and battery . . . . .	10.7
Breach of the peace . . . . .	9.9
Aggravated assault and battery . . . . .	8.3
Grand larceny . . . . .	7.3
Malicious mischief . . . . .	6.0
Coercion and threats . . . . .	5.6
Resisting officers . . . . .	5.4
Robbery and extortion . . . . .	2.0
Indecent assaults on children, etc. . . . .	0.48

courage to break and enter; embezzlement and fraud prosper better in commercial pursuits, in which women are relatively less engaged than are men.

The infrequency of assault and battery and malicious mischief is due less to their lack of physical strength than to the fact that they are less given to drinking than men. A drunken woman, too, is more apt to express her fury in verbal abuse than in a direct attack. I hesitate, however, to trace the frequency of insults to this rare source. The cause is



rather to be found in the greater sensitiveness of the woman, who is only too apt to think that some unfriendly remark casts a reflection on her honor, and replies with an insult; the constant friction between the inmates of large tenement houses is also partly to blame.

Finally, another specifically feminine offense is false accusation. Though the number of such offenses committed by men is greater than that of those committed by women, yet we must not overlook the fact that women are kept from conflicts to a much larger extent because of their work at home and their domestic seclusion. The act of which persons are often falsely accused is a sexual attack, and the victims of such false accusations are frequently clergymen and physicians. The accusation is not always a pure invention; sometimes hysterical delusions and misunderstood pathological sensations are at the bottom of it. It occasionally happens that such an accusation is made after narcosis or hypnotism, when only the presence of a second person can protect the physician.

On the whole, it may be said that women's crimes bear rather the character of insincerity, those of men of brutality. We have reason to be glad that the number of convictions, compared with the total number of responsible women, shows but an inconsiderable increase, 15% less, in fact, than the increase in the convictions of male individuals in two decades (Table XXXII).

The importance of this stagnation in women's criminality must not be underestimated; above all, because of the economic significance that an accumulation of female convictions would have. This fact seems to me still more telling as a proof that women's greater participation in economic competition does not mean greater criminal danger. Embezzlement, fraud, receiving stolen goods, have all decreased, in spite of the fact that more and more women are engaged in industrial

and commercial life or as working women. The geographical distribution also shows us that the industrial districts are, for the most part, below the average, as regards women's criminality.<sup>1</sup> It is not the work in factories and shops that produces crime, but its accompaniments, especially the taking part in amusements and carousals. The increase in crime among men and minors, and its stagnation among women, can only be explained by this difference in the mode of life of the two sexes.

TABLE XXXII<sup>2</sup>

CONVICTIONS PER 100,000 ADULTS OF THE SAME SEX

YEARS	MEN	WOMEN
1882-1891 . . . . .	1746	375
1892-1901 . . . . .	2091	304
Total percentage . . . . .	19.5%	5%

A few words must be said in regard to the question whether the lesser criminality of women is not perhaps explicable by the fact that prostitution claims a large number of criminal women. Lombroso<sup>3</sup> positively asserts: "If cases of prostitution are included in the criminal statistics, the two sexes are at once placed on an equality, or the preponderance may even be thrown on the side of women." He himself, indeed, contradicts this sentence when he speaks of the large number of convicted juvenile girls (only 2% in Germany, by the way) as being derived from the "prostitutes not yet of age," and further, when he emphasizes the high criminality of prostitutes.

<sup>1</sup> Compare in this connection Map IP in the Statistics of the German Empire, N. F. CXLVI.

<sup>2</sup> Taken from the Statistics of the German Empire, N. F. CXLVI, II, 37.

<sup>3</sup> "Crime: its Causes and Remedies," p. 186, "Modern Criminal Science Series"; *Hortén*, trans.

I also believe it is true that we may sometimes see in the prostitute the equivalent of the criminal. Many a young girl would resort to stealing and embezzlement in order to gratify her desire for pleasure and dress, if prostitution did not afford her an easier and more profitable means of satisfying her wishes.

Nevertheless, I do not believe that it is the male thief, street robber, or forger that corresponds to the prostitute, but the beggar and the vagrant. Only in a very slight degree do prostitutes possess the qualities that are essential to the carrying out of graver crimes, to deliberate, purposeful action (p. 93). In general, they are apathetic persons, lacking in energy and frequently somewhat weak-minded, who would not, indeed, stop at crime if occasion should offer in a tempting form, just as the tramp does not disdain at times to lay hands on others' property. But on the whole, beggars and vagabonds, as well as prostitutes, shirk energetic action.

At present, then, I can see no reason for regarding prostitution as a kind of criminal safety valve which allows the active dangerous inclinations of women to find another outlet; it is rather a substitute for the relatively harmless beggar and tramp.

#### § 16. Domestic Status

Judging by von Oettingen's<sup>1</sup> experience, the number of convicted persons is nearly everywhere greater among the unmarried than among the married. He sees in this "a proof of the elevating power of family life, in spite of the fact that the cares of occupation and of providing for the family are more numerous in this case. But within the sphere of regulated domestic and business life such cares have a beneficial influence; they prevent excesses." In contrast to this, the crim-

<sup>1</sup> *Loc. cit.* p. 524.

inal statistics of the German Empire point out that "great caution must be used in deducing anything from the influence of domestic status on criminality."<sup>1</sup>

Our statistics divide criminals, according to their ages, into three groups only: from 21 to 40, from 40 to 60, and 60 and over. In the first group, in 1901, the unmarried, widowed, and divorced predominated as regards most offenses, those excepted being prison breach, insult, simple assault and battery, coercion, embezzlement, receiving stolen goods, extortion, and forgery. Between the ages of 40 and 60, robbery and violent extortion are the only exceptions in favor of the unmarried. Otherwise, the criminality of the married is considerably higher. Finally, among old people, married criminals predominate over unmarried, except as regards indecent offenses, grand larceny, fraud and arson.

We get an entirely different result if we divide these groups according to sex; I give the most important figures, taken from Prinzing's<sup>2</sup> calculations, in Table XXXIII. The bringing of the figures into relation with 100,000 persons of each category, and the adoption of a twelve-year period, guarantee the reliability of the conclusions. Thus considered, the figures show undeniably that marriage has a favorable influence on men. This does not apply to those who marry as early as under 25 years; they commit a large share of all crimes. One of the external causes is undoubtedly the poverty that so often accompanies early, heedless marriages. In such cases a young and immature fellow, who is scarcely able to earn his own support, takes upon himself the care of a wife. Often numerous children are born, who add to his burden, and the direct result is that he lays hands on others' property. Moreover,

<sup>1</sup> "Statistik des Deutschen Reiches," N. F. LVIII, II, p. 18.

<sup>2</sup> Prinzing, "Die Erhöhung der Kriminalität des Weibes durch die Ehe" ("Zeitschrift für Sozialwissenschaft," 1900, III, p. 433); "Der Einfluss der Ehe auf die Kriminalität des Mannes," *Ibid.*, 1899, II, p. 37.

at this age men are not apt to stay at home with their wives and children instead of going to the public-house, as the large number of them that are convicted of simple and aggravated assault and battery shows.

TABLE XXXIII

(AFTER PRINZING)

Convictions in Germany 1882-1893 per 100,000 men and women of each category:

Age	ALL CRIMES AND OFFENSES			BREACH OF THE PEACE			INSULT			ASSAULT AND BATTERY		
	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED
<b>MEN</b>												
12-16 years	661.1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
15-18 "	1319.3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
18-21 "	2294.5	6412.0	.....	141.7	226.4	.....	111.1	444.5	.....	900.6	1909.3	.....
21-25 "	3107.0	2566.3	.....	179.4	192.4	.....	173.3	279.0	443.0	949.1	808.3	1102.1
25-30 "	2260.9	2204.7	4273.7	175.6	144.8	235.6	222.9	270.6	331.4	729.6	518.9	735.5
30-40 "	2280.9	1961.2	3797.3	180.6	105.3	197.7	277.3	316.2	377.3	424.8	226.1	411.3
40-50 "	2205.7	1487.8	2626.3	93.0	75.1	132.9	240.7	311.3	317.3	302.3	180.3	225.5
50-60 "	1241.9	1009.3	1267.3	39.0	45.7	51.9	133.1	237.7	167.5	91.7	115.1	107.6
Over 60 "	494.6	460.1	342.7	11.0	19.3	11.2	66.4	122.9	66.6	31.5	48.9	29.3
<b>WOMEN</b>												
12-16 years	149.5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
15-18 "	320.5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
18-21 "	415.3	602.5	.....	5.4	16.9	.....	24.3	88.5	.....	20.4	67.5	.....
21-25 "	417.5	469.9	1229.3	6.9	13.3	29.6	24.9	35.7	157.1	24.9	61.1	96.4
25-30 "	440.7	454.5	1149.2	8.6	15.2	23.2	44.2	94.8	137.1	29.8	53.7	88.2
30-40 "	446.2	500.0	1039.9	11.1	21.2	32.7	37.3	116.7	133.4	29.9	61.0	70.3
40-50 "	334.7	468.2	709.9	10.6	23.9	27.3	58.4	121.4	121.7	21.3	55.3	46.3
50-60 "	221.5	229.5	309.2	6.2	15.3	15.9	43.6	94.3	77.1	13.9	33.9	25.7
Over 60 "	102.3	123.4	111.2	3.0	6.0	4.2	23.4	38.3	26.7	7.0	14.2	8.6

With increasing age, however, the criminality of married men decreases. Partly, perhaps, because improvident marriages are rarer among older people, and a larger percentage of the married belongs to the well-to-do and educated class. Another reason is, that older men are more likely to stay at home, partly because they lack the means for unnecessary expenses, partly because the pleasure they take in their own

homes and their own families compensates them for staying away from the public-house. Another fact that probably contributes to the significance of this change is, that their criminal past and their preference for the life of a thief, a

TABLE XXXIII — (Continued)

(AFTER PRINZING)

Convictions in Germany 1881-1893 per 100,000 men and women of each category:

Age	PETIT LARCENY			GRAND LARCENY			AIDING, AND RECEIVING STOLEN GOODS			FRAUD AND DEFALCATION			MALICIOUS MISCHIEF		
	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED	SINGLE	MARRIED	WIDOWED OR DIVORCED
<b>Men</b>															
12-15 years	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
15-18 "	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
18-21 "	551.7	1418.3	..	117.4	..	..	42.0	..	..	117.4	254.0	..	188.4	296.4	..
21-25 "	427.7	685.9	627.2	80.0	77.7	..	32.2	70.1	..	144.9	156.0	..	168.6	136.1	241.9
25-30 "	532.3	412.6	572.1	60.8	41.0	78.5	35.3	43.8	49.4	170.2	109.0	326.5	144.6	83.5	200.7
30-40 "	411.9	296.9	550.0	48.0	24.9	68.2	39.8	37.2	63.6	206.4	91.9	340.9	139.4	58.9	136.4
40-50 "	565.0	216.2	420.0	28.8	13.7	38.3	23.5	33.1	56.2	172.0	68.0	212.0	97.8	39.5	94.2
50-60 "	233.1	181.6	231.1	14.0	6.7	13.8	15.4	26.0	27.6	92.7	43.1	88.6	43.4	23.7	34.6
Over 60 "	109.2	84.0	67.2	3.4	2.3	2.1	5.8	13.4	7.8	33.6	18.2	17.5	12.2	11.9	9.0
<b>Women</b>															
12-15 years	110.3	..	..	6.7	..	..	..	..	..	..	..	..	..	..	..
15-18 "	194.9	..	..	12.3	..	..	..	..	..	..	..	..	..	..	..
18-21 "	210.6	200.3	..	13.0	14.1	..	9.2	33.7	..	37.8	36.6	..	4.7	7.1	..
21-25 "	177.1	147.8	585.7	11.3	8.0	23.6	10.6	26.3	42.2	35.6	23.4	94.6	5.4	6.1	21.4
25-30 "	158.5	132.0	318.5	9.3	6.5	12.1	12.6	23.9	52.4	35.0	18.7	80.7	5.8	5.7	14.5
30-40 "	136.6	127.1	205.9	6.2	5.4	12.5	17.2	32.6	61.3	31.1	17.7	58.5	7.4	6.3	11.2
40-50 "	92.2	104.0	175.9	3.7	3.5	5.9	16.1	36.4	56.4	20.9	15.5	33.8	5.1	6.1	8.9
50-60 "	61.2	64.4	88.6	1.9	1.7	2.5	11.4	22.6	29.6	11.9	9.5	15.7	3.8	4.2	4.7
Over 60 "	32.0	31.1	28.0	0.4	0.6	0.4	4.5	8.8	7.4	6.1	4.7	3.7	1.8	1.9	1.5

tramp, or a drunkard, is in many cases the reason that the unmarried never marry, and thus they influence unfavorably the number of unmarried criminals. That a man is necessarily, as Prinzing believes, favorably influenced by living with a member of the female sex, in which criminality is much lower, does not seem to me so certain.

When we see how much higher the criminality of married

women is than that of unmarried, it almost seems as if this were due to the intimacy of the married woman with the man, whose criminal inclinations are more pronounced. We might naturally assume that the married woman, who is supposed to be "provided for," would be less liable to engage in criminal activity. But this is not the case, above all as regards young women, who up to their twenty-first year are responsible for a large number of the thefts committed. Later, however, theft, in particular, is rarer among married than among unmarried women. Partly, probably, because in later years a married woman is generally able to depend on her husband for her daily bread, and because older women of the poorest classes are often able to live on astonishingly little. When a mature married woman transgresses, it is generally as an accessory, a receiver of stolen goods, or an offender against trade regulations.

Convictions for assault and battery, for breach of the peace, for insult, increase among married women. Prinzing connects this with the practice of drinking. "In many places it is customary for a woman to accompany her husband on Sunday when he goes to the public-house, and, although this is often the best way of preventing his drinking to excess, yet it sometimes happens that the woman is drawn into the dreadful vortex."

I admit this, but would lay much greater stress on another source of these crimes. Almost without exception I have found that insult and breach of the peace were the result of two or more women's living together. In the large tenement house, the use of common passages, gardens, yards, cellars, and storerooms is the source of endless disputes and friction. The relations between the parties gradually become more strained, until some trifle, frequently an act of one of the children, gives rise to a scene that often ends in insults and an assault.

The proof that it is not the gravest crimes for which married women are responsible is consoling, but not so the fact that, on the whole, the criminality of married women is increasing while that of unmarried women is not. This increase of crime among married women corresponds to the spread of the causes of their principal offenses. The more women frequent public-houses, and the more large families are packed together in small spaces, the greater is the danger of conflicts. If we could prevent women from becoming more and more regular patrons of public-houses, and if we could introduce single, instead of large, tenement houses, the criminality of the married would soon fall below that of the unmarried, and the beneficial influence of family life would appear. I wish especially to emphasize, however, that, even if these external conditions were favorable, it would still be necessary for us to do everything possible to prevent too early marriages. The greatest danger lies in them; unfortunately, the law does not permit us to hinder the marriage of those who are physically and mentally immature and of those who are economically incompetent. The reduction by the Civil Code of the age up to which the parent's consent is necessary, from 25 to 21, was a great error from the standpoint of criminal policy.

A remarkable phenomenon is the high criminality of the widowed and divorced, which is lower only among those over 60 years. I must confess that I know of no explanation of this. Prinzing thinks,<sup>1</sup> "the loss of the husband or wife often produces a mental disturbance in the other spouse; we may also suppose that many widowers find it difficult not to lose their moral balance." It is not clear why this latter should be so, particularly as we find the same high criminality among widowed and divorced women. It would seem more probable that some marriages are dissolved because of crim-

<sup>1</sup> *Loc. cit.* p. 125.



inal acts, so that later crimes are only a continuance of the former mode of life. It is an error, however, to believe that a widower (why not also a widow?) frequently becomes insane owing to "grief." If this does occur — I personally have never known of such a case — it must be only as an exception, without any bearing on criminal statistics.

No explanation can be given at present. Light might perhaps be thrown on the subject if the widowed and divorced were considered separately.

### § 17. The Physical Characteristics of the Criminal

The question whether psychic qualities appear in externally visible phenomena has always attracted thinking men. The temptation to seek for such external signs increases with the consciousness of how difficult it is to decipher a man's character. Common experience of the ease with which we mistake others' thoughts and feelings positively cries out for objective signs to supplement our subjective judgment.

The problem is still unsolved. The names of Lavater, Gall,<sup>1</sup> Spurzheim, and Lombroso, as well as the interpretation of handwriting, represent efforts that are as various as they are different in value for finding such signs. Nevertheless, we are far from knowing reliable external signs of qualities of character. Hitherto all efforts in this direction have been in vain; they failed because the value of the few details they discovered was always exaggerated.

Lombroso's teachings have always been defended with more heat than objectivity, and it may be asserted of many of his opponents, that they have carried on a bitter fight against

<sup>1</sup> Gall is by no means merely a visionary or a swindler as many represent him to be. In fact, much credit is due him for his study of the anatomy of the brain, credit that has been forgotten in the justified attacks on his phrenology. Compare *Möbius*, "Über die Anlage zur Mathematik," Leipzig, 1900, Joh. Ambr. Barth, p. 197.

him without having an absolutely clear idea of his doctrines. It is not so easy to form a clear idea, because in course of time he changed many of his original assertions. But to reproach him with having done so, seems to me entirely without justification; some of his untenable earlier statements gave way to better knowledge. Of one failing, however, Lombroso cannot be acquitted, of a surprising lack of critical faculty. He makes use of accurate and careful measurements, anecdotes and proverbs, statistical data and subjective impressions, inscriptions written on prison walls from monotony, observations of individuals and phenomena of masses, without distinguishing sharply between what is important and what is unimportant. In his later editions numerous statistics are repeated which are undeniably erroneous. This lack of reliability is due, in part, to the multifariousness of his publications, which made deeper and thorough study impossible, but it is probably owing to natural superficiality.

It would be unjust, however, to judge him only by his faults. They have simply made it easy for his opponents to stamp him and his doctrines as unscientific. I consider Lombroso's theory of the born criminal erroneous, nor do I agree with many of his assertions, but, just because I count myself among his opponents, I think it necessary to declare that, without him, criminal psychology would never have made the advance the fruitful results of which we are now gathering. I must acknowledge that Gaupp<sup>1</sup> is right when he says: "The researcher (Lombroso), with his wealth of ideas and his intuition, is a scientific phenomenon in whom much light and shade are united; the genuine kernel of his doctrines will long outlive the achievements of many of his sharpest opponents."

<sup>1</sup> *Gaupp*, "Über den heutigen Stand der Lehre vom 'geborenen Verbrecher'" (MSchrKrimPsych. I, 33).

Kurella,<sup>1</sup> Lombroso's most faithful adherent in Germany, thus sums up the latter's doctrine of the "born criminal": "This hypothesis supposes that all true criminals possess a definite causally connected series of physical characteristics, anthropologically provable, and psychic characteristics, psycho-physiologically provable, which show them to be a particular variety, a special anthropological type. This series of characteristics necessarily makes its possessor a — perhaps undiscovered — criminal, quite independent of all the social and individual conditions of life."

Lombroso denies neither the significance of the individual's acquired characteristics nor that of social influences, he does not dispute the existence, either of criminals of passion, or of occasional and habitual criminals. In his last work<sup>2</sup> the discussion of external causes even occupies by far the most space; the anatomical characteristics of the "delinquente nato" are almost entirely lacking. Yet he tenaciously holds to his theory that about 35% of all criminals<sup>3</sup> are born criminals, and that they bear numerous marks that differ from the normal.

Before we proceed to examine the correctness of these views, especially in their further development, which represents the "uomo delinquente" as a peculiar, atavistic type, we must review what we know of the body and mind of the criminal.

This is more difficult than it seems. Precisely in this field of investigation a tremendous amount has been produced; dilettantism works side by side with careful and critical research, and it is the more difficult to obtain a clear view because we are concerned with the most complicated questions imaginable. We have no canon of the normal man by which

<sup>1</sup> Kurella, "Naturgeschichte des Verbrechers," p. 2.

<sup>2</sup> Lombroso, "Die Ursachen und Bekämpfung des Verbrechens."

<sup>3</sup> *Ibid.*, p. 326.

to measure all deviations. We cannot simply compare the German with the Italian, the Northerner with the Southerner, for it needs but a glance to convince us that the average type of the Lombards or of the tall and vigorous people of the Romagna is far removed from that of the small Southern Italian. On the other hand, intermarriage between the races has resulted in a vast decline of the pure national type. This makes it even more difficult to adopt a type with which the criminal can be compared.

A further obstacle lies in this, that we cannot easily obtain indisputably normal material for comparison. For, with a regiment of soldiers, for instance, even if we leave out all who have already come into conflict with the law, and all of questionable mentality — who are not lacking in the army — it is still a question whether, among those that remain, some are not criminally inclined. Many a man whose evil deeds are by no means slight has escaped criminal prosecution, and many another has only external and fortunate circumstances to thank for it that his criminal tendencies are active in a sphere that lies outside the criminal code.<sup>1</sup>

Most serious of all is the fact that we are unable exactly to define what must be recognized as a mark of degeneration. Kraepelin's<sup>2</sup> definition reads: "We are accustomed to regard certain defects in development which occur with some frequency among those of unfortunate heredity as physical signs of hereditary degeneration ('stigmata hereditatis')." But it is difficult to define the sphere within which all deviations in development must be regarded as still normal.

Naecke<sup>3</sup> is quite right in pointing out that we cannot

<sup>1</sup> *Ferriani*, "Delinquenti scaltri e fortunati," Como, 1897.

<sup>2</sup> *Kraepelin*, "Psychiatrie," 7th ed., 1903, Joh. Ambr. Barth, Leipzig, I. 122.

<sup>3</sup> *Naecke*, "Degeneration, Degenerationssichen und Atavismus" (Arch. Krim. Anth. I, 202).

regard as a sign of the degeneration of the nation in question anything that is ethnically conditioned. The conception "mark of degeneration" must always be determined in relation to time, place, age, and sex, and a certain margin for deviation from the average must always be allowed.

It is less important for us whether the deviations from the average structure of the body, and defects in the development of its organs, are really to be looked upon as degenerative phenomena or as anatomical variations, as Stieda asserts. Among insane persons, criminals, and healthy persons, we find a varying number of anomalies, some of which bring about a considerable functional disturbance in the organs affected. We see that such malformations and deviations from the average type are rare among healthy persons and numerous among insane ones. We find, further, that they are most pronounced where injurious influences, alcoholic excesses of parents, for instance, have affected the children; and finally, experience teaches us that persons in whom several of such anomalies are found are thereby rendered inferior and less capable of resistance. All this justifies us in calling these disturbances in the organism marks of degeneration, in the clinical sense.<sup>1</sup>

In 1899 Lombroso<sup>2</sup> asserted that in the course of a few years the criminal-anthropological school had examined 54,131 insane, criminal, and normal persons. It is particularly difficult to select the useful material from this abundance, because the results are often sharply and irreconcilably contradictory. Precisely in the sphere of physical examinations I have no systematic investigations of my own at my disposal. I be-

<sup>1</sup> Naechke, "Über den Wert der sogenannten Degenerationszeichen" (MSchrKrimPsych. I, 202).

<sup>2</sup> Lombroso, "Neue Fortschritte in den Verbrecherstudien"; translated by Merian, Gera, 1899, C. B. Griesbach.

lieve, however, that it is possible, without quoting too many details and figures, to give a summary of the present status of such research.

The brain and the skull claim our chief interest, the brain as the seat of the psychic functions, the skull because it is the key to the size and appearance of the brain. The latter is so complicated in structure that it is undoubtedly difficult to determine the boundaries of the normal. Even its most external quality, weight, varies greatly. Welcker established a weight of 1388 grams as the limit of the normal. A later investigation undertaken by Handmann ("Archiv für Anatomie und Physiologie," 1906, p. 1) also established 1370 grams as the average weight of a grown man's brain. But while many eminent men had considerably heavier brains (Cromwell, Cuvier, Turgenieff, Byron, Schiller, Volta, and others) many who were not less gifted had brains weighing considerably less (for instance, Dante, the anatomist Döllinger, Gambetta, Gall). The heaviest brains that Bischoff<sup>1</sup> himself observed belonged to ordinary and unknown workmen, and, lately, a brain weighing even well over 2000 grams has been found in an idiot. This is the best proof that it is not the outside measurements and weighable qualities, like size and heaviness of the brain, that are of importance, but its structure.<sup>2</sup>

Within the margin of the normal, the structure of the brain differs to such an extent that it is difficult to judge of the value of striking deviations. Moreover, a perfectly regular formation of the brain is no proof of mental health. Outwardly the brain may appear to be perfectly normal, but we may occasionally find serious changes in its cortex which cannot be combined

<sup>1</sup> *Bischoff*, "Das Hirngewicht des Menschen," Bonn, 1880, p. 136.

<sup>2</sup> *Draeseke*, "Gehirngewicht und Intelligenz" (*Archiv für Rassen- und Gesellschaftsbiologie*, 1906, p. 518).

with mental health.<sup>1</sup> Often neither a macroscopic nor a microscopic examination will disclose defects, although the possessor of the brain unquestionably suffered from a serious mental disorder. I mention this especially, because erroneous ideas about the results of post mortem examinations often exist. They sometimes enable us, especially microscopic examinations of the cortex of the brain, to say definitely that disease existed, but never to affirm with certainty that the brain was healthy.

According to Benedikt, Mingazzini, and others, the significance of the deviations in the configuration of the brain should lie in this, that within the margin of variation the brain convolutions found in criminals show atypical and atavistic formations much more frequently than do those found in normal individuals. A Russian anatomist, Sernoff,<sup>2</sup> has lately made a special study of these deviations; his explanations deserve to be held in the highest esteem, because he has long devoted himself to the subject of the brain. He rejects most of the anomalies described, because he shows that, although they do, indeed, occur somewhat more frequently in criminals than in others, yet they are to be regarded as variations of the normal type of convolution. There was one exception to this rule: the separation of the calcarine fissure from the occipito-parietal fissure was found in 1% of the brains of normal persons, in 8% of those of criminals. Sernoff admits that this combination of convolutions "forcibly reminds one of the relations in microcephalic individuals and certain repre-

<sup>1</sup> According to *Kraepelin* ("Psychiatrie," 7th ed., II, 823), "In two cases of congenital obtuse lack of feeling, which in both cases led to murder and the guillotine, Nissl found unquestionable chronic changes in the cells of the cortex, a proof that in people who, like these two, are not regarded as insane but as morally corrupt, a pathological condition of the brain may be found."

<sup>2</sup> *Sernoff*, "Die Lehre Lombroso's und ihre anatomischen Grundlagen im Lichte moderner Forschung" (*Biologisches Zentralblatt*, XIV, 305).

sentatives of the animal kingdom, and that it has long been regarded as an atavistic phenomenon."

All other deviations in the brain and skull Sernoff either denies outright or strips of their significance. This applies, above all, to the relative smallness of the frontal bone, or, rather, of that part of the frontal bone that covers the frontal lobes of the brain. The fact that the average value of this part of the skull is lower in criminals than in non-criminals is confirmed by Sernoff; but at the same time he points out that there is no fixed relation between the size of the frontal bone and the brain lobes, that, on the contrary, a small forehead often contained a frontal brain above the average in size and vice versa.

TABLE XXXIV

	PROGNA- THISM	PROM. ORBI. CURVE	RECEDING FOREHEAD
Kurella (3641 cases) . . . . .	12.6%	11.8%	7.9%
Baer (968 cases) . . . . .	20.4%	3.2%	4.7%

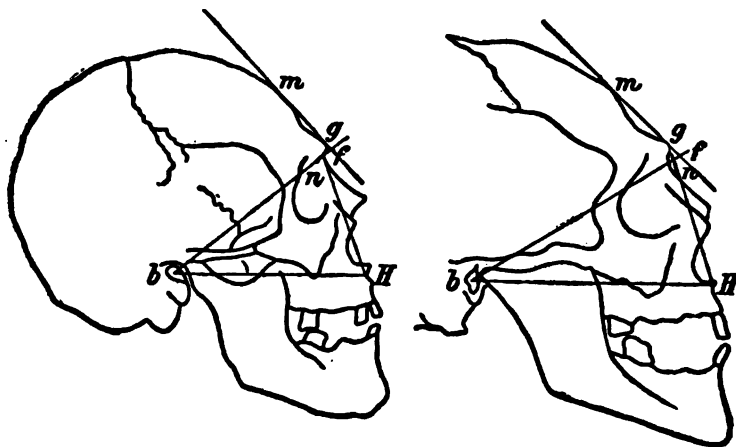
Still another assertion of the Lombroso school is recognized by Sernoff as correct. "The relatively strong development of the skeleton of the face with the resultant prognathism (protrusion of the facial part of the skull) and the receding forehead." These deviations are clearly shown in the two drawings taken from Kurella's book.

In Table XXXIV Kurella's summary of the frequency with which these deviations are found is compared with Baer's calculations.

I have purposely compared precisely these two authors with each other: Kurella who for years has been an eager and gifted adherent of Lombroso, possessing an unusual knowledge of the literature bearing on the subject, and who



represents Lombroso's teachings in Germany, and Baer,<sup>1</sup> who, as an opponent of the theory of the born criminal, has based his view on particularly careful investigations of his own. Baer, also, as we see, confirms the fact that these deviations occur frequently.



(Drawings from Kurella.)

The angle  $bf$  is used to measure the slope of the forehead, the angle  $bHn$  to measure the prognathism, which is seen externally in the pronounced projection of the upper jaw and in the protruding teeth. These anomalies are usually combined with prominence of the orbital curve.

The size of the skull has been the object of many detailed investigations. Knecht's<sup>2</sup> figures and Baer's do, indeed, differ, but they enable us to perceive that unusually small and strikingly large heads are not rare among criminals. Among 1214 convicts Knecht found as many as 2% with

<sup>1</sup> A. Baer, "Der Verbrecher in anthropologischer Beziehung." Leipzig, Georg Thieme, 1893.

<sup>2</sup> Knecht, "Über die Verbreitung physischer Degeneration bei Verbrechern und die Beziehungen zwischen Degenerationszeichen und Neuropathien" (Allg. Zeitschrift für Psychiatrie, XL, 589).

pronounced hydrocephalic head formations, indicating pathological processes in the earliest period of development.

As often as a new field of criminal anthropological investigations has been attacked, the same thing has been repeated. First, the assertion is made that a certain form of deviation is characteristic of the criminal. Then it is proved that the same phenomena are found in non-criminals, and finally, it is shown that these anomalies are somewhat more frequent in criminals. Hence, it would lead only to useless repetitions if I should take up each of the marks of degeneration in turn and speak of what has been found to contradict them. The most important physical signs of degeneration, such as ill-formed ears, extra fingers and toes, the abnormal position and formation of the teeth, abnormal formations of the sexual organs and the mammary glands, unequal development of the body, etc., are all found in healthy people as well. They are the more numerous, the nearer we approach to the degenerate insane. Between the two stands the criminal. Even Lombroso's most eager and decided opponents do not deny that degenerative signs are found particularly often in criminals. Thus Naecke<sup>1</sup> says: "We can only refer to a possible, perhaps probable, inferiority of those who bear the stigmata of degeneration, no more; even that, however, may be valuable 'in foro' or to corroborate a diagnosis." And recently he has gone farther:<sup>2</sup> "The longer and the more accurately we investigate, the more do we value the doctrine of degeneration, without, however, trusting to it blindly, as do some of the Italians."

I should not care to go as far as Naecke in the forensic

<sup>1</sup> Naecke, "Degeneration, Degenerationszeichen und Atavismus" (Arch. Krim. Anthr. I, 216).

<sup>2</sup> Naecke, "Über den Wert der sogenannten Degenerationszeichen" (MSchrKrimPsych. I, 108).

judgment of a criminal; I consider it inadmissible to make even the slightest use of the existence of marks of degeneration, even in the most pronounced form, to tip the scale in a case of questionable guilt. Nevertheless, what cannot be applied to the individual criminal may yet have general validity.

I share this view with Baer, who, in spite of his cautious criticism, is obliged to admit: "Abnormalities of a simple or graver kind are often found in criminals singly, or in larger numbers, and although there is nothing specific in them, yet they are signs of the inferior value of the criminal's organization."<sup>1</sup>

In reality, we should not wonder at finding so many criminals physically inferior; the contrary might well excite surprise. By far the largest number of criminals come out of classes in which poverty and wretchedness are common, in which underfed women during pregnancy must often use up their strength in hard work; the unborn child is often poisoned in the germ by the drunkenness and disease of its parents. This cannot be met with the statement that our poorer classes are still able to provide a physically fit army. Not all those degenerate, who are subject to the conditions of degeneration; not all, but many. The descent of criminals (compare p. 124) proves that the recruits of the criminal world are most often found among the children of drunkards and the insane, among the poorest of the poor; in view of this, the existence of signs of degeneration ceases to be striking, and the signs themselves cease to bear the specific character of a phenomenon peculiar to crime.

### § 18. The Mental Characteristics of the Criminal

In considering these mental characteristics we are on firm ground as long as we keep to the intellectual abilities. The

<sup>1</sup> Baer, *loc. cit.* p. 117.

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degree of knowledge and the power of judgment that a man possesses can be ascertained. On the other hand, we at once enter upon an uncertain field as soon as we examine the emotional life, the passions, the moral sense; then we turn from objective facts to subjective impressions.

The fact that the intellectual capacity of the criminal is far below the average has already been made the subject of a detailed discussion. The experience of teachers and overseers in penal institutions fully confirms it. The subjects in which the teacher instructs the prisoners are extremely elementary, and yet the results of his efforts are pitifully small. Undoubtedly the dislike of learning plays a part, but it is certainly not all-important. A superficial examination of 405 prisoners with sentences of over six months showed me that, apart from 31, whose mental state I shall speak of later, 67 were more or less feeble-minded, certainly far below normal in their intelligence; 8 of them were decided imbeciles, almost idiots.

Both Baer<sup>1</sup> and Kirn<sup>2</sup> have tried to combat Lombroso's teachings, and Baer in particular has spent infinite pains in examining the assertions of the Italian school, with a view to corroborating or refuting them; both, however, have emphasized the low plane of the criminal's intellectual development, Baer expressly pointing out that "social environment and educational conditions cannot be held accountable for it." Hence Sommer<sup>3</sup> is undoubtedly justified in saying: "In the general rejoicing at the refutation of Lombroso in detail, the positive facts were entirely overlooked, which he [Baer] contributed to the doctrine that there are inherent momenta that lead to crime."

<sup>1</sup> Baer, *loc. cit.* p. 246.

<sup>2</sup> Kirn, "Geistesstörung und Verbrechen. Festschrift der Anstalt Illenau," Heidelberg, 1902, p. 97.

<sup>3</sup> Sommer, "Kriminalpsychologie," Leipzig, 1904, p. 313.

I purposely emphasize so strongly the low mental status of criminals, for it explains, without the aid of unprovable theories, why, with many criminals, the ethical perceptions are so strikingly distinguished from those of the average man. The weak-minded are generally children of the moment. Everything makes a deep impression on them for the minute; often, indeed, the mental response is particularly vivid; but this momentary leaping up of the intelligence subsides again as quickly. The lessons of experience, which serve normal persons as a guide in later events, soon fade, because they cannot be fitted into the existing condition of the ideas. The inability to understand, much less to form general points of view, is the direct result of mental weakness.

This is the picture that many criminals present to us. I must confess that, after reading the papers in the case, I was often prepared to see a rough, brutal man, when, in reality, I found a quiet, docile, and even good-natured, feeble-minded fellow. This is true not only of those who are sentenced for the first time; precisely among people with long criminal records I often found such quiet, feeble-minded persons; by this I do not mean imbeciles of such defective mentality that our existing laws would classify them as irresponsible.

These people — and this applies also to a large number with average intelligence — are often strikingly unstable, — not in the penal institutions, where they often submit to the regulations of the house without any difficulty, where they work industriously under pressure, but when at liberty, when, in spite of the best resolutions, they give way to the first temptation.

At present we are not able to describe the psychology of the criminal. In the first place, because the material from the details of which we should construct a complete image is too varied. All attempts to determine the main characteristics

fail on account of the difficulty of exactly defining these characteristics, and on account of the danger of generalizing from particularly striking individual observations. I do not wish to underestimate the value of the careful analysis of the especially striking phenomena of crime, when I assert that, on the whole, we can learn little by it at present. Every case certainly has its peculiarity, and practice in observation alone makes the pains spent on it worth while. But we must not forget that it is not the murderers, not the swindlers on a larger scale, not the assassins of people in high places, and not the sexual murderers, that determine the criminal physiognomy of our day, but the thieves and pickpockets, the swindlers and abusers of children, the tramps and prostitutes. These are the criminals that first demand our attention. The very fact that all these offenses are so frequent, makes it possible slowly and cautiously to draw conclusions from the analysis of individual cases, conclusions that may lay claim to universal validity. As long as we are satisfied to examine the most external phenomena, to ascertain the intellectual capacity, the error that consists in valuing simultaneously the most different kinds of criminality is not so great. But as soon as we go deeper and begin to study the passions, the moral perceptions, the degree of altruistic thought, remorse, and similar qualities, we must restrict ourselves to a few psychologically similar crimes. Otherwise we make the same mistake that we rightly object to in the works of some of the Italian school. Let us, however, go on collecting material and studying a few particularly interesting cases. The day will come, in time, when we can draw our conclusions from them. But we have not yet reached this point.

What has been written of the characteristics of criminals must be used with great caution, except where the most elementary qualities are concerned. I think it a mistake to

regard most of the experiences, or rather general impressions, that have been collected, as typical characteristics of criminals. It, therefore, seems to me unjustifiable to speak of them in general, as has been done, as brutal. We find sentimental inclinations opposed to the most outspoken brutality in some cases, utter deceitfulness contrasted with naïve frankness in others, and, what is still more striking, we find the most contradictory qualities united in the same individual. This is another sign of the instability mentioned above; carried away by the mood of the moment, the same individual is sometimes devotedly unselfish, sometimes purely egoistic.

One characteristic must be spoken of especially: the criminal's own judgment of his act. I should like to avoid the word "remorse," because the sorrow that is often displayed for what has happened frequently does not correspond to an inner feeling, because pretense, in order to stand well, is too easily bred, according to the tone of the penal institution. In the course of many conversations with criminals of all kinds and all classes, I have most frequently been struck with the superficiality of the criminal's comprehension of the gravity of his crime. Almost never did he grasp the reprehensibleness of his deed with sufficient force to give rise to the thought whether he could not make good the damage he had done. As a rule, his understanding was directed more towards the future than towards the past. Thus, he might firmly resolve not to relapse again, but would scarcely be tortured by thoughts of the past, beyond regretting that he would be marked as having served a sentence.

The conviction that the present penalty is the last that they will undergo is often heard, even from those criminals who have always been only temporarily at liberty; on the other hand, criminals have often told me that they fear it will not be long before they again relapse into crime. Very rarely, on the

contrary, and only in those intimate moments that occur often enough between the physician and the convict, particularly when the latter is ill, have I heard a man express the intention to resume his criminal career as soon as his sentence shall have expired. I do not mean to infer that this idea is remote from the criminal's mind; the contrary is proved by the fact that, even within the prison walls, plans are often enough discovered for the carrying out of new thefts. Nevertheless, I think I am justified in concluding that the criminal is not so often anxious to take up his old life as is commonly supposed. It must not be forgotten, however, that I speak mainly of convicts in prisons, who are the only ones that I have been able to observe more carefully. Undoubtedly, more professional thieves and swindlers are found in the penitentiaries. The groups of prisoners in the centres of culture, too, may display other traits.

Among the psychological characteristics of the criminal, Lombroso also includes the thieves' slang and the desire to be tattooed. He sees in these tattooings the bridge that leads to the savages, who also ornament their bodies in this way. It is true that criminals are often tattooed with all kinds of designs, from the simplest marks to the most intricate, often, even, really pretty representations of animals and plants, including trade and vocational signs, and human figures of all kinds, especially those of acrobats, contortionists, etc., as well as names and verses of all sorts. But this ornamentation is not a sign of the criminal world nor of psychic degeneration, but merely a regrettable custom that happens to be very popular in Germany at present. It shows local differences very distinctly. Tattooing is extremely common among seamen, and not rare, but with local differences, among factory workmen and soldiers. A man who knows how to tattoo pretty pictures often persuades whole regiments to let him



try his art. Hence, tattooings are altogether valueless as psychological data.

But perhaps we might infer something about a man from the subject of the designs he bears. This is certainly the case in so far as obscene images are concerned. Where we find tattooings on the genital parts, unusually vulgar figures, or those that suggest perverse sexual inclinations, we know that the individual who bears them is not given to prudery. A large number of girls' names, too, characterize a man better than a "dissipated appearance" would. Fortunately, here in Germany, images of unmistakable sexual significance are rare. On the whole, we must be most cautious in inferring criminal peculiarities from such marks.

I consider the proverbs and sayings that seem to indicate a whole tragedy utterly without significance. Lacassagne<sup>1</sup> found, for instance, the mottoes: "fils du malheur," "le passé me trompe," "l'avenir m'épouvante," "le présent me tourmente"; but, among 700 individuals, the first saying was borne by eight, the last by three, persons. The fact that the words were repeated more than once would lead me to suspect that the man who tattooed them, rather than the individual who bore them, was responsible for the choice, and that they indicated, at most, merely an inclination to pose. And even that seems to me to be assigning too great a psychological significance to them; at least, several times when I asked a man why he had chosen certain proverbs, such as "learn to suffer without complaint," or "born to misfortune," I was told that the professional tattooist had recommended them as "particularly beautiful."

Thus, tattooing loses much of its significance as a sign of criminal tendencies. But, because of its practical importance, I must not omit to mention the fact that many tattooed per-

<sup>1</sup> Lacassagne, "Les tatouages," Lyon, 1887.

sons have been thus adorned while in prison awaiting trial, as I and various other observers were able to ascertain.<sup>1</sup>

Thieves' slang was formerly an extremely characteristic mark of the criminal. Just as every class, every profession, is inclined to use certain expressions with secondary meanings, to coin special, peculiar terms — think, for instance, of students' slang — so, too, it is in the criminal world. Formerly a great deal of attention was paid to the different variations of this thieves' slang, to the "Rotwelschen," Romany, and foreign language, especially Hebrew, elements.<sup>2</sup> Even today in professional criminal circles, numbers of specific expressions are undoubtedly current, but German words with a humorous tinge are rapidly taking the place of foreign terms, especially among tramps. There is still undoubtedly some difference in the terms used by the different kinds of criminals, and this sometimes makes it possible for the man of experience to distinguish the common tramp from the individual who makes a business of swindling peasants, the habitual thief from the procurer. But I do not think that Stumme<sup>3</sup> is right in calling thieves' slang a secret language; it is rather a vocational language, and proves nothing but that the person who speaks it has had the opportunity of learning it; at most, it shows with what class of people he has associated.

The study of thieves' slang is still justified today. But not as a contribution to the psychology of the present-day criminal world. Ellis<sup>4</sup> probably best characterizes the situation when

<sup>1</sup> *Berger*, "Tätowierung bei Verbrechern" (Vierteljahrschrift für gerichtliche Medizin, XXXII, p. 56).

<sup>2</sup> *Avo-Lallemant*, "Das deutsche Gaunertum," Leipzig, 1862, F. A. Brockhaus, IV.

<sup>3</sup> *Hans Stumme*, "Über die deutsche Gaunersprache und andere Geheimsprachen."

<sup>4</sup> *Havelock Ellis*, "Verbrecher und Verbrechen," Leipzig, 1895, Georg H. Wigand's Verlag, p. 183.

he says: "The modern professional criminal avoids it just as he avoids tattooing."

On the whole, no traits can be recognized in the psychology of the criminal that are characteristic of him, nor could this be expected when we consider the general way in which the question has hitherto been treated. We might rather hope for success if we studied certain kinds of criminals separately. I believe that certain criminal specialists, as, for example, the "high flyers," the pickpockets, certain sexually immoral criminals, procurers, prostitutes, and tramps would show special peculiarities. I do not believe, however, that these characteristics will ever permit us, without knowing the person's past, to infer criminal tendencies, that they mean more than a certain menace in a definite direction.

#### § 19. Mental Diseases among Criminals

Our penal code does not call those transgressions of the legal order that are committed while the perpetrator is insane or unconscious, crimes (§ 51). Official statistics, therefore, leave us entirely in the lurch when we consult them as to the frequency of those crimes which could not be punished because of mental disease. We are altogether dependent on the scattered records of alienists. In Dalldorf, among 1706 insane persons, Sander<sup>1</sup> admitted 112 (6.6%) directly after they had come in conflict with the criminal law. In counting the patients in the Heidelberg clinic for the insane, I found much higher numbers. On three days, in three different years, I found,<sup>2</sup> once 37%, once 43%, once 57%, of the male patients who, at some time before their admission, had offended seri-

<sup>1</sup> *Sander und Richter*, "Die Beziehungen zwischen Geistesstörung und Verbrechen," Berlin, 1886.

<sup>2</sup> "Über gefährliche Geistesranke" (*Allg. Zeitschrift für Psychiatrie*, LVII, p. 138).

ously against the criminal laws. It is true that a considerable number were prisoners awaiting trial, whose mental condition was being observed, and tramps, so that my figures are probably well above the usual average.

A description of the crimes that are committed by insane persons does not lie within the scope of this book; it belongs in the text-books on judicial psychiatry.<sup>1</sup> Nevertheless, stress must be laid on the fact that the mentally diseased are a menace to legal security, as the newspapers daily show us. The immeasurable misery that insane persons cause can only be avoided by their early admission into sanatoria and asylums. Hence, every attempt to require the establishment of insanity and danger to the community at large by some kind of legal procedure before the patient can be sent to a suitable hospital, is superfluous, if not injurious to the insane person, and a blow in the face of public safety.

It is also difficult to ascertain the number of the insane in penal institutions. Partly because there is no sharp dividing line between health and disease. This is true, principally, in the large sphere of congenital and acquired feeble-mindedness. The alienist who, in daily contact with such patients, has the opportunity of observing carefully the phenomena of idiocy and imbecility will include among the mentally diseased many feeble-minded persons that the layman, the prison warden, and the judge consider normal. It is difficult to convince either of them of the contrary opinion, because many feeble-minded persons conduct themselves blamelessly within the prison walls, where the system of the institution and their work relieves them of the task of thought, and where the temptations of the outside world are lacking.

<sup>1</sup> *Hochs*, "Handbuch der gerichtlichen Psychiatrie," Hirschwald, Berlin, 1901; *Cramer*, "Gerichtliche Psychiatrie," 3rd ed., Gustav Fischer, Jena, 1903; *Delbrück*, "Gerichtliche Psychopathologie," Ambr. Barth, Leipzig, 1897.

Not all the feeble-minded, however, are numbered among the docile, quiet members of the prisons. Sometimes they come to grief on the demands that are made of their power of comprehension; then their foolish obstinacy is aroused, their emotional excitability is increased, and this leads to the most unpleasant scenes, to senseless raving and screaming, to abusive language, and assaults on attendants.

Still more frequent are scenes with epileptics in which it seems as if the fury that has been accumulating for a long time and has been restrained with difficulty, suddenly breaks out. The conception of this disease includes periodicity, the change from completely normal behavior — assuming that epileptic idiocy has not already occurred — to pathological disturbances of the consciousness. On this soil, especially, the very slightest cause is often sufficient to kindle an irritability that is expressed in wild raving. The contrast between the person's usual quiet demeanor and these sudden outbreaks makes it very difficult for the layman to recognize their pathological origin. They are injurious, not only to the patient, who is, of course, subjected to the most severe disciplinary measures, but also to the discipline of the institution.

In the interests of the execution of the penalty, as well as from a medical standpoint, it is imperative that these and other pathological conditions should be immediately recognized for what they are, that they may be prevented in the future. Many physicians, unfortunately, are hampered by a lack of psychiatric knowledge. In addition, the time that is at the disposal of most physicians in which to make their own observations is generally insufficient, the reports of the officials in the institution are incomplete and frequently influenced by the unfortunate tendency to regard many symptoms as simulated. All this makes it difficult to see the case clearly and dispassionately, and thus it happens that what for years

has been considered due to malice and criminal qualities sometimes is later recognized as the expression of a psychic disease.

The difficulties of ascertaining how many insane persons are serving sentences are reflected again in the variation of the figures that represent the different institutions in the statistics of penal institutions and prisons published by the Prussian Ministry of the Interior. As a whole average for the last three years, I have reckoned, from the figures for penitentiaries, 1%, from those for prisons, 0.24%, insane persons.

In itself, this low percentage is not surprising, although in the prisons, at least, the numbers do not reach 4 to 1000, which, according to the general opinion, is the proportion of the insane to the whole population. According to the laws, the gates of penal institutions should, indeed, be closed to the insane; thus there would remain only those who become insane while they are serving their sentences. In reality, however, the situation is very different.

Those persons who have committed a crime during or in consequence of their mental disease have been classified as "criminal insane." Krohne<sup>1</sup> has taken exception to this term because it "tears away the foundations of all penal justice, which is expressed, both in the rule of the *Sachsenspiegel*: 'the real fool and the senseless man shall not be judged,' and in the *Code Pénal*: 'Il n'y a ni crime ni delit en cas de démence.'" Every psychiatrist certainly represents this point of view, but, unfortunately, not every judge. As a matter of fact, we find real fools and senseless men enough in all penal institutions, some of whom have been sentenced even in spite of an alienist's report.

Hence, the term "criminal insane" must only be understood in the sense of insane persons who have committed some act

<sup>1</sup> *Krohne, loc. cit.* p. 273.

that is punishable according to law. It is not easy to ascertain afterwards how large their number is among the convicted; at least, the judgment is not so reliable later, as when the effort is made to separate them as soon as they are committed. Yet I should mention that, of all the insane women in the Hubertusburg institution, Naecke<sup>1</sup> reckons that from 20% to 25% were mentally diseased when sentenced. Scheven<sup>2</sup> found that, of 114 criminally insane persons in Mecklenburg who were admitted to the insane asylum, either from penal institutions while awaiting trial, or while at liberty, 49 had been unjustly punished. Also, among the criminals who, while serving their sentences, were transferred to the hospital for the insane because of a psychosis, that is, among the so-called "insane criminals," there were probably many who did not become insane during imprisonment, but whose disease was recognized then; accordingly, Scheven estimates the percentage of insane persons who were convicted in spite of their condition to be about 34% of all the insane persons who come into conflict with the criminal code.

These miscarriages of justice are distributed over many years; nevertheless, the proportion of such errors is not inconsiderable. I can corroborate this by the result of my own investigation.<sup>3</sup> For more than three years I have examined systematically and indiscriminately into the mental condition of every criminal committed to the penal prison in Halle for an offense against sexual morality, after having learned as much as possible of the person's past from the documents and records of the local authorities. Of the 200 such criminals

<sup>1</sup> Naecke, "Verbrechen und Wahnsinn beim Weibe" (Allg. Zeitschrift für Psychiatrie, XLIX).

<sup>2</sup> Scheven, "Geistesstörung und Verbrechen in Mecklenburg-Schwerin" (Arch. Krim. Anthr., IV, 266).

<sup>3</sup> Aschaffenburg, "Zur Psychologie der Sittlichkeitsverbrecher" (MSchr. Krim. Psych. II, 399).

that I examined, only 45 were entirely normal, and, even of these, alcohol had been the provocative agent of the criminal action in twelve cases. Ten suffered from senile decay (all sentenced for indecent assaults on children), 2 from dementia due to calcification of the arteries, 4 from other kinds of psychoses, 1 from dipsomania, 1 from severe hysteria. Fourteen were idiots; 3 feeble-minded persons and 9 epileptics had to be counted irresponsible, because their diseases were combined with drunkenness or other detrimental momenta. Thus 44, nearly one-quarter, unquestionably belonged in an asylum for the insane, for idiots, or for the aged, instead of in prison. But even the others, who were not considered irresponsible, showed more or less serious psychic anomalies, especially feeble-mindedness, epilepsy, chronic alcoholism, etc., so that only 45 could be pronounced unquestionably normal. There were only 99 whom I should have reported to be entirely responsible, or very slightly affected in their responsibility, if I had been called upon to examine them as an expert.

Fritz Leppmann's<sup>1</sup> examination of the inmates of the penitentiary in Moabit produced a similar result. He found only 30 normal men among 90 convicted of rape or of assaulting children, and in Moabit there are no men over 40 committed for offenses against chastity, above all no aged men, who may all be considered psychically defective, even if not entirely irresponsible.

Among the beggars and tramps that he examined, Bonhöffer<sup>2</sup> found 12% who were insane to such a degree that § 51 of the Penal Code would apply to them. "Much larger, as would naturally follow, was the number of those who,

<sup>1</sup> *Fritz Leppmann*, "Die Sittlichkeitsverbrecher, eine kriminal-psychologische Studie" (Vierteljahrschrift f. gerichtl. Medizin, N. Folge, XXIX, 2).

<sup>2</sup> *Bonhöffer*, *loc. cit.* p. 56.



from a psychiatric point of view, would be classified as having 'decreased responsibility.' If we should include all those with slighter acquired or congenital psychic defects, all imbeciles, epileptics, inebriates, senile individuals, and those that were pathologically irritable, the number would exceed 75% of the whole."

The mental condition of other criminals is probably not as bad as that of tramps and criminals against sexual morality. But from the foregoing it may well be concluded that the alienist should be more frequently consulted, especially where offenses against chastity are concerned, and his report taken more into account. If this were done, many of the cases of illness in penal institutions would disappear.

A small number of the psychoses that break out in prison is due to the alcoholism that is so common among criminals, a number to epilepsy. Some delinquents, however, show the first signs of disease during their imprisonment, and the most careful examination reveals nothing that would justify us in assuming that the first symptoms were present before the criminal act was committed. The peculiar symptoms of this psychosis, which is generally characterized by auditory hallucinations while the mind is otherwise quite rational, has led to the recognition of a special form of disease, "prison delirium."

This is of importance, inasmuch as the frequency of this condition was often attributed to the cell system, solitary confinement, and isolation, and a dangerous enemy to this so beneficial institution of our penal system was thus created. Subsequent experiences, however, have proven that this fear, if not entirely groundless, was at least of small significance. Rüdín<sup>1</sup> found that, among 94 diseased prisoners, "confine-

<sup>1</sup> Rüdín, "Die klinischen Formen der Gefängnispsychosen" (Allg. Zeitschrift f. Psychiatrie, LVIII, 497).

ment symptoms" appeared in 28 cases. Of these, 22 were psychoses of which the symptoms had merely been given a peculiar tinge by imprisonment, and the other 6 too were probably identical with diseases that also occur outside prisons. The symptoms appeared 18 times in solitary confinement, 10 times in common confinement. One thing may be said with certainty: in general, the diseases that occur during imprisonment are identical with those that occur in persons who are at liberty, and all that can be attributed to confinement is the predominance of certain symptoms. In any case, "convict's insanity," if it exists at all as an independent psychosis, is extremely rare.

My own experiences lead me to agree entirely with this view of Rüdin's. The idea that solitariness awakens in the criminal feelings of remorse, that the shades of his victims surround him threateningly, that despair overwhelms him, till he is no longer able to think clearly and collapses under the torments of his conscience — all these fine ideas cannot stand in the face of sober observation. Prison or penitentiary may, indeed, hasten the criminal's lapse into insanity occasionally, — in rare cases, perhaps, even cause it; but, as a rule, the penal institution merely happens to be the dwelling, at the moment, of the person in whom the disease breaks out. When we consider that most convicts are encumbered by heredity and have not lived in accordance with the laws of health, we cannot wonder that they often develop mental disease.

In the penitentiary of Waldheim, Knecht<sup>1</sup> found that 7% of the individuals were so burdened with psychic defects, or so disposed to psychoses, that they developed mental disease either before or during their imprisonment. Baer<sup>2</sup>

<sup>1</sup> *Loc. cit.* p. 595.

<sup>2</sup> "Lehrbuch der Gefängniskunde," Ferdinand Enke, 1889, p. 260.

found a somewhat lower percentage: of every 100 prisoners, at least 5 had mental defects, and of these, 2 had pronounced mental diseases.

As I have mentioned, on one day, of the 405 prisoners with sentences over six months that I examined, 67 were distinctly sub-normal. Of these, 8 were feeble-minded to such a degree that they absolutely deserved the protection of § 51 of the Penal Code. Eleven men suffered from the most various forms of mental disease, some of them from senile insanity. Besides these 19, I found hysteria in 1 case, epilepsy in 10, and nervous disturbances of a serious nature in 9 others.

From my own experience I must add that even grave psychoses often for a long time elude the eye of even a practiced observer, unless they affect the person's outward demeanor. The longer and the more frequently the physician sees such patients, the more certain, of course, will his diagnosis be. Hence, the observations of convicts that have been made during long years in the penitentiary are the most valuable. Most significant is Krohne's<sup>1</sup> judgment, for he cannot be reproached, as alienists so often are, with being prejudiced in favor of insane persons by his profession. He says: "According to my careful investigations, made with the co-operation of the institution's physician, Dr. Werner, and the two specialists, Dr. Richter and Dr. Langreuter, both of whom are certainly experienced in this field, the number of the mentally deficient in the penal institution Moabit amounted on an average to 10%, and yet the inmates of this institution are all penitentiary prisoners with sentences ranging up to 4 years, those under 25 having been committed, whether or not there was any former conviction against them, and those over that age and under 40 being men who have not already repeatedly served prison or penitentiary sentences. Thus

<sup>1</sup> "Lehrbuch der Gefängnisakunde," Ferdinand Enke, 1889, p. 290.

the institution does not harbor any completely depraved habitual criminals, nor any aged and weak-minded ones."

The suspicion is involuntarily forced upon the layman that a large number of these apparent cases of illness may be boldly simulated. In reply, one thing may be definitely asserted, the simulation of psychoses is as difficult as it is rare. Attempts to "play the raving madman" do, indeed, occur occasionally, especially in large cities like Berlin, where the opportunity to study the subject is easier to find. But all such attempts are strangled at once if the prisoner knows that he is confronted by a specialist; usually a quiet serious demeanor suffices to cause the symptoms to disappear.

Then it is that the difficult task still lies before the alienist of finding out whether the individual is not really insane after all, for experience teaches that simulation is generally tried by insane persons. Hence, I will only mention my own experiences. Among the unusually large number of prisoners held for examination whom I have seen in the course of my psychiatric practice, there were only 4, if I except some acting that lasted for a day or two, who showed symptoms for a lengthy period which we thought were simulated. Of these, 2 later proved to be incurably insane, and I do not hesitate to pronounce our diagnosis as erroneous in at least one of the other cases, although perhaps it was unavoidable.

In two other cases, besides the simulated symptoms, there was pronounced feeble-mindedness, although in neither was it of such a high degree that I could apply § 51 of the Penal Code. Quite striking are Longard's remarks (on moral insanity, "*Archiv für Psychiatrie*," XLIV, No. 1), in which he says that in no case where, together with the physicians of public insane asylums for instance, he diagnosed simulation, was he successful. In every case, even in one in which the

criminal himself confessed that he was simulating, the individuals proved to be insane after all.

The fact that I have met with no simulant who was unmistakably normal, and with very few in any case, is certainly due to chance, for other psychiatrists of cautious and experienced judgment have occasionally found simulants;<sup>1</sup> nevertheless, cases of pure simulation without any pathological basis are isolated exceptions.

Brief attacks of pretending to be insane, particularly to be imbecile, are more frequent, both before the examining judge and while serving sentence. But they are rarely long or consistently carried out. The criminal judge and the prison official ought gradually to recognize this. If an unfortunate prejudice did not exist, and if, whenever a striking symptom appears, the suspicion did not arise that it is merely simulated, examination by a specialist would more often be demanded, and thus many an individual who, according to our laws, must be regarded as innocent, would be delivered from the prison and the penitentiary. The officials in penal institutions, too, who are inclined by their daily contact with criminals to think the worst of prisoners, should be more influenced by the general experience of specialists. If they were, persons who are psychically unbalanced would not so often have to taste the extreme severity of disciplinary punishments, and all possible methods would not be employed to break the obstinacy of a supposed simulant. Such measures are all in vain, for they are directed against a symptom that does not exist, against simulation, and because it is attempted to influence a man who cannot be influenced because he is insane. This cannot be remedied until the distrust of the physician disappears, and the institution officials are familiar with at least the first principles of psychiatry. The earliest

<sup>1</sup> *Bresler*, "Die Simulation von Geistesstörung und Epilepsie," Halle, 1904.

possible recognition of the prisoner's condition will then spare him unnecessary punishment, and the discipline and order of the institution will only gain, because the patient will soon be removed from his unsuitable surroundings.

The enormous frequency among criminals of mental disturbances and aberrations in the widest sense of the word suggests the question, what relations exist between the abnormal mode of thought of the insane and that of the criminal? Past experiences forbid us to draw a sharp dividing line between the two. I will only mention as the example of a psychosis, softening of the brain, the symptoms of which, known in part also to the layman, most easily admit of the proof that we are concerned with a serious and incurable disease. Clinically, we have known this disease only since 1826. How many diseased persons before that must have been misunderstood and, with their inclination to criminal actions, have been delivered over to the criminal judge! What we have experienced in regard to softening of the brain and some other diseases may be repeated at any time. Certain symptoms may combine in a certain aspect of disease that is as yet unknown to us, and thus the boundary of mental health would again be removed.

A sharp separation of the mentally normal from the psychically diseased criminals also hinders the knowledge of what are called "borderland conditions."<sup>1</sup> One flank of the whole army of the feeble-minded, the hysterical, the epileptic, of those who suffer from persistent hallucinations and from neurasthenia, of those who are injured by the habitual abuse of alcohol or morphine, stands beyond the boundary of criminal responsibility; but where only the very slightest degree exists, the person must be pronounced responsible. I shall return to the importance of these "borderland states" in

<sup>1</sup> *Hochs, loc. cit.* p. 533.

criminal prosecution; here their significance is merely that of a bridge from the dangerous insane to the dangerous criminal.

Both, criminality and mental disease, are plants that draw their nourishment from the same soil, physical and mental degeneration. The fact that this soil is not able to produce better fruit must be attributed to intemperance and wretchedness, to the marriage of mentally deficient persons, in short, to unfortunate social conditions. Why it is that one child of a drunkard will be epileptic, idiotic, or insane, and another, with no discernible psychic defect, but irritable and unstable, will become a criminal; why one of a depraved family's badly brought up children will turn drunkard and end in the insane asylum, while another finds his way to prison, we do not and never shall know.

#### § 20. The Classification of Criminals

In spite of some alterations in his classification of criminals, Lombroso<sup>1</sup> continued to maintain that perhaps one-third of all criminals represented a special type distinguished by common physical and mental qualities. He considered the proof of these physical and psychic anomalies of particularly great value, because to him they were signs that the "delinquente nato" was an atavistic step in the development of mankind. This assertion is, at present certainly, entirely unfounded. The dividing line between the really atavistic formations and the anomalies that arise in earliest youth, or during foetal development in consequence of pathological processes, is just as difficult to draw as that between the anomalies themselves and the variations that still lie within

<sup>1</sup> Lombroso, "L'anthropologie criminelle et ses récents progrès," Paris, 1896, Felix Alcan, p. 92; "Ursachen und Bekämpfung des Verbrechens," 1902, p. 326.

the margin of normality. The most able judges in this sphere, the anatomists, and among these, above all, Sernoff, reject the atavistic significance of most of the variations found by Lombroso and his followers.

Similarity in anatomy and mental qualities to savages and the peoples of former ages has been used to support the theory that the criminal signifies a relapse which may lead "beyond the savage, to the animal itself." This hypothesis stands on very uncertain feet; the life and doings of primitive peoples are often very different from the rough and unchecked brutality, cruelty, and other characteristics which are advanced as the basis of the likeness between savages and criminals.

Entirely mistaken is the comparison between crime and epilepsy. The "epileptic background, from which the clinical and anatomical picture of the morally insane person and of the born criminal is projected, acts as a medium for the comprehension of the directness, the periodicity, and the paradoxical contrast of their symptoms, which, without doubt, are their most prominent characteristics." This view is based on an entire misunderstanding of epilepsy. A criminal never shows epileptic characteristics unless he is suffering from this disease. This is common enough and is easily explicable, if we know the frequency of epilepsy among drunkards and the children of drunkards. But the only thing that crime has in common with epilepsy is the common soil of degeneration.

All of Lombroso's attempts to separate the born criminal from the normal man by bringing him into connection, partly with atavistic, partly with pathological, states, have come to grief; and so has the endeavor to characterize the criminal "clinically and anatomically." We must never infer criminal tendencies from the existence of all kinds of stigmata



of degeneration, just as the fact that an individual is descended from insane parents and bears numerous stigmata does not justify us in assuming that we have to do with a psychically diseased person.

The decided rejection of any pathognomonic value of criminal anomalies, in which almost all German scientists without exception are agreed, has aided in refuting two problems,<sup>1</sup> which must be kept quite separate, namely:

1. Whether born criminals exist.
2. Whether this congenital moral abnormality expresses itself in tangible, morphological signs.

Sommer affirms the first question "unconditionally." Kirn,<sup>2</sup> too, and Baer<sup>3</sup> are obliged to admit, in the same breath in which they speak of the theory of the born criminal as refuted, that at least we are concerned with inferior human material. "In any case, so much is certain, that the average habitual criminal is below the average mental plane of humanity in general."<sup>4</sup>

The analysis of what we have ascertained concerning the body and mind of the criminal leads to the same conclusions. Intellectually and physically they fall below the average. This does not apply to the individual, but to criminals as a class, just as we may say of a race that it stands on a low plane without intending to intimate that it lacks physically strong and intellectually eminent men.

As we have seen above (p. 124), inferiority is the result of descent and training. Thus, the roots of the evil are transferred to the social sphere. The great advantage of this is,

<sup>1</sup> Sommer, "Die Kriminalpsychologie" (Allg. Zeitschr. f. Psych. LI, 782; "Kriminalpsychologie," Leipzig, 1904, p. 311).

<sup>2</sup> Kirn, "Über den gegenwärtigen Stand der Kriminal-Anthropologie" (Allg. Zeitschr. f. Psych., L, 711).

<sup>3</sup> Baer, "Der Verbrecher," p. 245.

<sup>4</sup> Kirn, "Geistesstörung und Verbrechen. Illenauer Festschrift," p. 98.

that we can confront the whole phenomenon with more courage, because we then realize how it must be combated. But Bleuler<sup>1</sup> is not wrong when he says: "Such influences of environment do not speak against Lombroso, they justify him, but go even a little beyond him by discovering the causes of the 'reo nato.'" This is true in so far as we try to ascertain whence the average inferiority comes. But we do not thereby acknowledge the existence of the "born criminal," whose nature forces him with fatalistic necessity into a career of crime.

The social evils, wretchedness and poverty, drunkenness and disease, produce a generation of men who are not equal to the storms of life; they are socially useless, in the same sense that those who are rejected, when recruits are examined for the army, are physically unfit. The State requires a minimum height and chest measurement. Some of those who are rejected as unfit would endure the exertions incidental to service perfectly well, just as some of the tall fellows with adequate chest measurements, collapse. The rejection of the short and narrow is merely an expression of the experience that the health of those below a certain limit is especially apt to suffer.

So, too, for us the establishment of a low intelligence, of physical and mental inferiority, is merely a sign of the lack of the power to resist social circumstances, a signal that warns us to be cautious and not to ask too much of these socially unfit. If we could tear up all these people out of the foul soil in which they are rooted, if we could strengthen them physically and steel them by education, if, above all, we could protect them from the dangers of life, we should be able to save most of them from social ruin.

But that would be Utopia. Life takes its course and grinds him who cannot keep up. As the struggle for existence is

<sup>1</sup> *Bleuler*, "Der geborene Verbrecher," Munich, 1896, J. F. Lehmann, p. 32.

going on at present, as national customs force everyone into the yoke of "doing likewise," we are obliged thus to judge the dangers to which we are all exposed. They are greater than the power of resistance of all these inferior persons; where the strong swimmer breasts and surmounts the surf, the weak one perishes. And those that perish are many. The Prussian statistics of penal institutions contain a highly noteworthy table on this subject.<sup>1</sup>

All those penitentiary prisoners who had served at least three sentences (penitentiary, prison, or house of correction), of which one or more amounted to six months and over, were counted on the first of October, 1894, and to these were added also those who were committed between then and March 31, 1897. A conference of officials reported what in their judgment was to be expected of each of these 15,539 men and 2510 women in the future.

The result is truly horrifying. Social uselessness was in the highest degree probable in 92.4% of the women, 94.8% of the men, in the first period; in 98% of the women, and 96.4% of the men, in the second period. The predominant cause is incorrigibility. But wherein can this incorrigibility consist, if we do not include those with physical and mental defects — in this case probably identical with invalidism and insanity — unless it be in the individual natural disposition? This is the instrument on which the storm of life strikes discords that clash harshly in our ears.

All theoretical considerations are powerless before the weight of these figures, representing as they do the experience of those who are in daily contact with criminals. We must reckon with an army of criminals who, under existing conditions, cannot be fitted into a regulated life. If we look

<sup>1</sup> "Statistik der zum Ressort des Königlich Preussischen Ministeriums des Innern gehörenden Strafanstalten und Gefängnisse," Berlin, 1900.

closer at these men, we shall find that outward causes play a very different part in their lives; one gives way at the slightest touch, another only after resisting temptation for a long time, but, as far as human power can judge, they one and all eventually succumb.

TABLE XXXV

THAT THE CONVICT AFTER HIS RELEASE WILL RECIDIVATE IS

	PROBABLE	BECAUSE OF			DOUBTFUL	IMPROBABLE
		INCORRIGIBILITY	PHYSICAL OR MENTAL DEFECTS	OTHER REASONS		
Men . . .	14,726	14,441	163	122	440	373
Women .	2,519	2,217	38	64	123	68
Total .	17,045	16,658	201	186	563	441

1900-1902 <sup>1</sup>						
Men . . .	8,369	8,357	10	2	225	92
Women .	1,132	1,128	4	..	30	26
Total .	9,501	9,485	14	2	255	118

Now, are all these socially "incurrigibles" morally insane persons, incorrigible because they lack the ability to perceive and follow the laws of morality? "Moral insanity" is a much disputed conception, and the controversy as to whether a disease can appear exclusively in ethical defects is not yet at an end.<sup>2</sup> Hence, I can only give my own personal point of view here: I do not believe in the existence of this disease. All the cases diagnosed as such with which I have come in

<sup>1</sup> After *Neuhaus*, "Die rückfälligen Verbrecher Preussens von 1900-1902." (Zeitschrift des Königlichen Preussischen statistischen Bureaus. 24 Jahrg. III Abt.)

<sup>2</sup> *Gaupp*, "Über den heutigen Stand der Lehre vom 'geborenen Verbrecher'" (MSchrKrimPsych. I, 25), and "Über moralisches Irresein und jugendliches Verbrechen," Halle, 1904.

contact were either accompanied by pronounced intellectual defects, or were merely symptoms of serious neuroses and psychoses which had failed to be recognized.

With this view, which, by the way, is almost universally shared, there is no longer cause for the frequently expressed apprehension that the alienists will see in every criminal an insane person who belongs in their hands rather than in those of the criminal judge. I mentioned in the last chapter that serious mental diseases exist oftener than judges think, but "de lege data," we are modest in applying § 51. We do not go nearly so far as Krohne<sup>1</sup> desires, whom experience of criminal justice induces to say: "The more the conception of the pathological disturbance of the mind which entirely precludes the exercise of free will is comprehended by legislators and judges, the more possible will it be to remove from society the large number of mentally defective persons who are not able to withstand the temptation to transgress the law, and thus become a true pest to society and to the judge, either for always, or until they are no longer dangerous." We are forbidden to go as far as this at present by the narrowly limited text of the laws and by the opposition of the judges, who are often extremely difficult to convince of the existence of serious psychoses. I also fear that there would be no end to those exempted, if we should proceed according to this proposal.

The establishment of the outward circumstances under which a crime is committed made it possible clearly to perceive a number of causes of crimes, of which I would mention again the influence of the seasons, the economic situation, and popular or national customs. From this it follows that crime is, in the first place, a social phenomenon; every age has the crimes that it produces. But not everyone becomes a

<sup>1</sup> Krohne, *loc. cit.* p. 274.

criminal; an individual or, as Sommer<sup>1</sup> calls it, an endogenic disposition, is necessary for that. This is the true kernel of Lombroso's doctrine, even if the stigmata that he gives are wrongly, or not sufficiently, proven. Every crime is the product of natural disposition and training, of the individual factor on the one side, and of the social conditions on the other.

It would be very fine if we could use this point of view as a sign-post in classifying criminals. They would then be divided according to whether the individual or the social factor predominated. But any such attempt unfortunately meets with the great obstacle that both causes are united in almost every crime, and yet, for practical reasons, an effort at classification cannot be avoided. Any division into groups has something forced about it; the wealth of nature fights against being classified in an artificial plan. This must be grasped at the outset, so that the establishment of different forms will not be misunderstood; they are not and must not be more than a guide to aid in finding the way amid the multifariousness of the phenomena.

Classification from the psychological standpoint would be the best if it were at all possible. At present, however, the problem is absolutely unsolved, and such attempts lead only to the most adventurous constructions, without any value. As a curiosity, that of Krauss<sup>2</sup> may be mentioned, who divides criminals into (a) men of strength ("Kraftmenschen"): 1, the monster ("Ungetüm"), 2, the choleric individual ("Choleriker"), 3, the passionate individual ("der Leidenschaftliche"); (b) the malicious ("Bösartigen"): 1, the demoniacal ("der Dämonische"), 2, the intrigant, 3, the rogue ("Schurke"); and (c) the weaklings ("Schwächlinge"): 1, the scamp ("Schuft"), 2, the sneak ("Schleicher"),

<sup>1</sup> *Loc. cit.* 313.

<sup>2</sup> Krauss, "Die Psychologie des Verbrechens," Tübingen, 1884, p. 227.

3, the vagabond ("Lump"), 4, the Caliban. This, of course, is nothing but pure novelistic psychology.

Ferri<sup>1</sup> distinguishes between five groups: criminal insane, born criminals, criminals by acquired habit, occasional criminals, and criminals of passion. As Ferri only intended to deal with the sociological significance of criminals, he does not hesitate to include the insane. The consequence is, that he, and, to an even greater extent, Lombroso, obliterate the line between psychic disease and criminality. The individuals cited by Lombroso as examples of *mattoids* (semi-insane persons) were all actually insane. The born criminal is distinguished from the criminal by acquired habit, in that, from his earliest youth, criminal instincts are inherent in him, whereas they are merely early implanted and developed in the other as a result of physical and social evils and neglect.

As the starting point of his classification Olrik<sup>2</sup> takes the criminal will, through which the purpose of the penalty (the protection of society by deterrence, discipline, and rendering the criminal innocuous) is determined. He distinguishes three main groups, according to whether the will is weak, of average (normal) strength, of particular intensity and obstinacy. In view of the difficulty of estimating the will according to these gradations, I consider the principle unpractical and too subjective.

At its meeting in Heidelberg, in 1897, the "Internationale Kriminalistische Vereinigung" distinguished three groups:<sup>3</sup>

1. Momentary (occasional) criminals;
2. Those criminals whose crime and preceding life show that, in consequence of defective intelligence or training, or

<sup>1</sup> *Loc. cit.* p. 85.

<sup>2</sup> Olrik, "Über die Einteilung der Verbrecher mit besonderer Rücksicht auf die Unterscheidung zwischen Gelegenheits- und Gewohnheitsverbrechern" (ZStW. XIV, 76).

<sup>3</sup> *Mittel. der I. K. V.*, VI, 582.

in consequence of later influences, their ability to subject themselves to the existing standards is weakened, and with whom the apprehension seems well-founded that neither a fine nor a brief loss of liberty will be of sufficient effect:

3. Criminals whose rehabilitation in social life as regulated by law can no longer be expected.

As its sole leading idea, this classification has taken the menace to legal security, as appears in the direct connection of the classification with the penalties to be applied, and it is the menace to legal security that arises from the natural disposition of the criminal, not that which is due to the frequently accidental gravity of the crime, that is considered. I should like to adhere to this grouping, but consider it desirable to divide it still further. My classification is composed of the following seven groups:

1. Chance criminals,
2. Criminals of passion,
3. Criminals of opportunity,
4. Deliberate criminals,
5. Recidivists,
6. Habitual criminals, and
7. Professional criminals.

Chance criminals are those who come into contact with the Penal Code as a result of carelessness. A cellar door left open, a burning match carelessly thrown away, an error in a prescription written in a moment of mental fatigue, careless driving, a runaway horse, any of these things may put the most respectable, humane man in the dock. Often the damage done is enormous, as, for instance, in railway accidents, while the responsible switchman may be still less to blame on account of extreme over-fatigue. There is absolutely no suspicion of any intention to injure public legal security.

This is also true to a great extent of the criminal of passion,



who is carried away in a moment of excitement and loses his power of deliberation. His crime, as Olrik says, is produced solely by his emotion, of which it is the natural expression, and the passion itself is psychologically explicable and excusable. The case of the husband who surprises his wife in adultery and kills her is often quoted as a typical example. The idea of emotional passion has found far-reaching recognition in the German Penal Code in the conception of defense. The significance of passionate excitement seems to me to be especially important in mob crimes, the commission of which has been discussed on page 121.

I should like to limit the expression "criminal of passion" to those who act in a momentary wave of passionate emotion, in acute excitement, and not include, as does von Liszt,<sup>1</sup> those individuals who are constantly dominated by passions; he mentions, for instance, several notorious women poisoners. These persons are continually under the influence of their emotional excitability; it is their innate character that determines their action, not an external impulse, which, in the storm of feelings, destroys all cool reflection.

Closely related to the crimes of passion, but distinguished from them by greater weakness of the excited emotions, are the crimes of opportunity. It is proverbial that the opportunity makes the thief. For the poor devil who keeps a piece of money that he has found, for the starving wretch who appropriates a loaf of bread in passing a baker's shop, temptation is overwhelming. In the one case it is more external chance, in the other, physical condition, that favors the commission of the crime. These are the least serious cases, in which everyone will view the deed in a mild light. There are graver instances, however, in which, though the chance opportunity is indeed the outward occasion, the deed itself

<sup>1</sup> von Liszt, "Strafrechtliche Aufsätze und Vorträge," II, 187.

indicates particular weakness of character. In this class belong many criminals against sexual morality and the thief who robs the till that he happens to find open in a shop. To such crimes, too, must be added probably most of the excesses due to alcohol, in which the emotional passion must be considered of secondary value.

All those offenses against the legal order which have just been mentioned have this in common, that they owe their origin especially to chance, to an unfortunate constellation; these are only different forms of what the "Internationale Kriminalistische Vereinigung" calls "momentary (or occasional) crimes." The subdivision, however, makes it appear distinctly that in the class of momentary criminals there are also highly respectable persons, who are divided by a very deep chasm from the thieves who rob the cash-drawer.

Quite different must be our judgment of the crime that is carried out with deliberation, the preliminary condition of which is the calm, premeditated plan; with no trace of haste the scheme is formed and executed. There is a vast difference between the psychological processes that lead to embezzlement or the theft of food, on the one side, and to burglary that is most intelligently carried out with all the advantages of modern technique, on the other.

In individual cases, it is true, the boundaries are blurred. When the opportunity is particularly tempting, when a theft happens to be particularly easy of execution, the act, in spite of its premeditation, loses something of its gravity and often assumes almost the character of an opportunity that was not allowed to slip. A crime that is committed in a moment of excited passion also sometimes approaches a premeditated one, when, for external reasons perhaps, the immediate reaction to the insult or injury that has been done to the man's honor was not possible. The excitement, somewhat reduced

in strength perhaps, continues, and thus may later lead to a premeditated crime. Nevertheless, the psychological estimation of the act that is committed in the moment of passion, and the one that is delayed, is naturally different, although the two are inwardly related.

Much more dangerous to legal security are those crimes that are carried out with the systematic use of all the advantages that offer; the danger grows if the perpetrator adapts the outward circumstances to his wishes, and if he combines with others for the purpose of committing the crime.

The Penal Code regards as a relapse the repetition of the same crime after the earlier sentence has been served. Psychologically, however, the term must be more broadly comprehended. We must recognize as a relapse the repetition of the crime, even if no penalty lies between the commission of the two acts. But it is not enough that an individual shows the same weak power of resistance to the same temptation; we must also regard it as a relapse if the offenses that he commits, such as theft, concealing stolen goods, embezzlement, and fraud, or such as assault and battery and insult, spring from similar psychological motives. According to the existing criminal law, however, unless he commits the same crime, a man is not considered a recidivist, except in the case of theft, and then he must have been twice convicted for receiving stolen goods, robbery, or robbery and extortion.

It must not be left unsaid that women show a stronger tendency to relapse than men. Sacker<sup>1</sup> seeks the reasons for this, partly in the nature of woman, which is quicker to acquire a habit and clings to it longer, and partly in the difficulty with which women must make their way in the world. The first reason seems to me less important than the second.

<sup>1</sup> Sacker, "Der Rückfall" (Abhandlungen des kriminalistischen Seminars, III, Berlin, Guttentag).

"L'homme peut braver l'opinion publique, la femme s'y doit soumettre," quotes Sacker, and rightly. A woman who has once been convicted has much more difficulty in finding a new situation than has a man, and therefore sinks more easily.

While our penal code takes no account of former convictions unless they were of the same crime, our criminal statistics include as recidivists all persons who have already been convicted — for good reasons. Only in this way can we get an idea of the danger that threatens society from the habitual criminal. It would be a mistake to see in him always the activity of positive criminal tendencies. A large number of the more harmless habitual criminals, the tramps, who are the daily bread of the police organs and district courts, are characteristic examples of an habitual criminality, due mainly to negative qualities. Incapable of serious work, dulled to all fear of punishment, indifferent to everything, they wander from place to place, suffering hunger and thirst, frost and intense heat, sleeping sometimes under shelter, sometimes in the gutter, and yet only a very few among them are able to brace themselves and return to a life of industry.

Among the remaining habitual criminals, too, negative qualities predominate, especially in those who grow up in a criminal environment with no fear of the disgrace of punishment, become utterly depraved, and live on lazily and planlessly from day to day. Their criminal activity changes with their opportunities and needs. Their attempts to work their way up fail because of their inability to withstand the temptations that are all too frequent in the mire in which they live.

Much smaller is the number of criminals with positive criminal desires. Usually they only gradually develop into what they are, but once they have become specialists of a

certain kind, they are irredeemably lost to society. Their intelligence is greater than that of the common scamp who takes any opportunity that offers; generally they work on a large scale. To this class belong the international pick-pockets, who only "work" on great occasions, at horse-races, etc., the burglars who operate with all kinds of chemical and technical appliances, and the "gentlemen swindlers" ("Hochstapler"). To them, all crime is a profession. It is remarkable that our legislation knows of no "occupational crime" except concealing stolen goods, gambling, poaching, usury, and prostitution, that "the legislator is entirely unacquainted with precisely the chief present-day types of crime as an occupation."<sup>1</sup> It is just these criminals who are incorrigible in the true sense of the word. They, together with a small proportion of the habitual criminals, correspond to the group classified by the "Internationale Kriminalistische Vereinigung" as "criminals whose rehabilitation in regulated social life can no longer be expected."

Our statistics show, it is true, that the number of the "incorrigibles" is very much larger; in the social sense, probably at least half of all the penitentiary prisoners are irredeemably lost. The majority of this group is made up of habitual criminals, only a small proportion being criminals by occupation. This distinction has more than a theoretical interest. In both cases the menace to the legal security arises from the individual disposition. One group, however, succumbs rather to inability to get on honestly in the world, an inability that is often connected with physical and mental inferiority, almost always with insufficient and defective training and education. The professional criminal, on the other hand, just because of his consistent and purposeful activity, his energy and his pleasure in his occupation, will, from the

<sup>1</sup> von Liszt, "Strafrechtliche Aufsätze und Vorträge," II, 323.

beginning, oppose any attempt to improve him with a much greater inner resistance, which leaves little ground for hope.

This classification does not pretend to be easily mastered. It will not always be possible, even after long study of the individual, to classify every criminal correctly. Often, too, one form develops out of another. Still, if all the causes of a crime are carefully considered and the character of the perpetrator sufficiently studied, it ought always to be possible to ascertain to which group he approaches most nearly.

The value of such a tedious separation of the harmless from the socially dangerous does not lie in the desire to systematize, but in its bearing on the future, which appears in quite another light if we are confronted by a chance criminal instead of a professional criminal. And on this depends what is most important of all, the method to be used in the war against crime.



## PART III

### THE STRUGGLE AGAINST CRIME

#### § 21. The Criminal Physiognomy of the Present

THE menace to public safety from crime has assumed proportions that must be somewhat threatening, even to the most unshakable optimism. Wach<sup>1</sup> does, indeed, assert that "No one will deny that we are living in an orderly, healthy, and satisfactory legal state," and further, "Even the disquieting impression that our criminal statistics at first make decreases on closer observation." He explains this by pointing out that, on examination, we find the number of first convictions to be on the decrease, and the whole increase to be placed to the account of recidivists.

According to this, in order to obtain a correct impression of present-day legal conditions, we must consider three questions: first, has the number of delinquents not previously convicted really decreased; secondly, what is the theoretical and practical significance of the increase in the "recidivists"; and, thirdly, can the legal condition in which we are living really be called healthy?

It is true that the number of those not previously convicted has decreased. Of the last twenty years the year 1900 has the lowest number of those convicted for the first time. But this decrease, unfortunately, is very slight, and is not an absolute one, but is only in proportion to the total population. The gaps left in the criminal army by disease and death, emigration and imprisonment, are almost entirely refilled by

<sup>1</sup> Wach, "Zukunft des Strafrechts," p. 6.



newcomers. Thus there can be no question of any decrease worth speaking about in criminal tendencies in general. This is most clearly proved by a summary of the last twenty years, in four sections.

To be sure, even then the last five years are the most favorable. But the whole decrease in criminality amounts to only one person for every million persons of punishable age. And if we consider the different crimes separately, even the most incorrigible optimist can no longer rejoice at the supposed decrease in the number of first convictions. If we do not include larceny, which is too largely influenced by economic fluctuations, improvement is found only in the offenses of resistance to State authority and violation of oath. The number of first convictions for assault and battery, fraud, and offenses against chastity and decency, on the contrary, is increasing considerably. It affords us only a crumb of comfort to know that the share of the recidivists in these offenses has increased much more rapidly than that of those convicted for the first time, and that a larger percentage of most crimes are committed by them than by the beginners.

The latter is especially noticeable in the case of juveniles, — for obvious reasons. Six years is such a short period that the individual is no longer a minor when later sentences are imposed. But is not the fact that nearly one-fifth of all the juveniles sentenced have already been convicted once, and some even six times and more without a parallel in sadness? If, at the same time, the number of all formerly unconvicted delinquents had decreased, we might be more inclined to console ourselves with the idea that these early corrupt persons represent the share contributed by mental and physical inferiority. But, instead of that, we see a fresh and evergrowing stream of juveniles appearing before the criminal judge. What makes this of graver significance than it would

TABLE XXXVI:  
FORMER CONVICTIONS OF PERSONS CONVICTED, PER ONE MILLION CIVILIANS OF PUNISHABLE AGE

	No Former Conviction				Already Convicted				One or Two Former Convictions				Three or More Former Convictions			
	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904
AVERAGE FOR THE YEARS																
CRIMES AND OFFENSES ARRANGED ACCORDING TO THE DEGREE OF CRIMINALITY IN THE FIVE YEARS FROM 1897-1901	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904	1887 TO 1890	1891 TO 1894	1895 TO 1900	1901 TO 1904
Assault and battery . . . . .	1084	1064	1006	1045	476	701	1080	1077	354	492	684	805	181	210	345	472
Theft and embezzlement . . . . .	2241	1933	1830	1680	1193	1302	1288	1294	732	712	700	745	460	461	590	659
Insult . . . . .	1045	1080	1049	1001	210	272	270	425	146	179	229	346	60	92	141	180
Fraud and defalcation . . . . .	257	290	223	314	162	236	230	275	94	127	171	131	67	100	120	154
Malicious mischief . . . . .	261	266	222	279	97	123	170	186	65	76	90	110	22	47	70	83
Resistance to State authority . . . . .	254	217	200	189	165	204	273	292	96	168	123	122	68	97	141	160
Crimes and offenses against chastity . . . . .	148	149	120	156	62	83	114	135	42	50	66	73	20	33	40	62
Violating oath . . . . .	34	20	27	20	13	15	17	16	9	10	11	9	4	5	7	7
All crimes and offenses . . . . .	7254	2906	7200	6905	2906	3406	4513	5036	1243	2190	2904	2905	931	1379	1204	2190

<sup>1</sup> From the "Statistik des Deutschen Reiches," N. F. CXLVI, I, pp. 90-93.

be with adults, is the fact that, annually, of every thousand young persons, six are dealt with by the courts, and that our educational methods cannot succeed in checking the new supply that annually feeds the army of criminals.

TABLE XXXVII<sup>1</sup>

CONVICTIONS PER 100,000 MINORS

YEARS	NOT FORMERLY CONVICTED	FORMERLY CONVICTED	FORMERLY CONVICTED ONCE	FORMERLY CONVICTED TWICE	FORMERLY CONVICTED 3 TO 5 TIMES	FORMERLY CONVICTED 6 OR MORE TIMES
1889 . .	521	93	58	20	14	1.1
1890 . .	556	107	67	24	15	1.1
1891 . .	559	113	70	26	16	1.4
1892 . .	604	125	76	29	19	1.7
1893 . .	567	119	72	26	19	2.0
1894 . .	583	133	79	29	22	2.7
1895 . .	571	131	78	29	22	2.4
1896 . .	570	132	77	28	24	2.9
1897 . .	571	131	80	27	21	2.9
1898 . .	605	139	83	30	23	2.9
1899 . .	595	138	85	29	21	2.7
1900 . .	607	138	82	30	23	3.2
1901 . .	604	135	81	29	22	2.9

The most important crimes committed by juveniles were given in Table XXX; the figures show a steady increase since the year 1882, except in simple theft. The offenses enumerated have not been subjected to any change in the legislative enactments during the years reported. Hence, the conclusion is unavoidable that brutality, recklessness, and licentiousness are spreading more and more in the growing generation. The reasons for this have already been discussed; I merely wish here once more to establish the fact, how extraordinarily dangerous juvenile criminality and its continued increase are.

The number of juveniles convicted during the last year

<sup>1</sup> "Statistik f. d. Deutsche Reich," N. F. CXLVI, I, p. 37.

(1903) of the imperial statistics amounted to 50,219. Nearly four-fifths of these were entering the criminal world for the first time, soon to compete with its veterans. But that the first step does not usually mean merely a single lapse, but generally the final break with a mode of life in accordance with the law, is shown by the number of recidivists; each conviction heightens the danger of relapse. Again and again we are confronted by the fact that redemption from crime becomes the more difficult, the oftener the person has been convicted. A number of those already convicted as juveniles attain their majority every year; they are then lost to view in the general herd of recidivists.

This state of affairs is depressing enough.

Here, too, we see that, from year to year, those who have already served sentences are more strongly represented among the convictions. The number of those convicted three times and more has doubled and trebled. The last two rows of the table show the course of those crimes in which relapse is considered an aggravation of the offense, because the repetition of the same crime implies its professional practice. Habitual fraud has grown considerably more frequent in the twenty years given, while the number of repeated thefts has decreased. But this does not prove that the professional thief has really grown rarer.

Among the recidivating thieves, just as among those convicted for the first time, there are certainly not a few who succumb the more readily to temptation, the more unfavorable external conditions are. This is supported by the fact that we find the highest number of recidivating thieves, as discussed on p. 105, in the economically poor years 1882 and 1892, and the lowest number in 1888 and 1900. I think we may assume that the professional thief is influenced by prosperous or hard times only as regards the success of his actions, not

as regards the intensity with which he practises, while the decrease in the repeated thefts is at the cost of the somewhat more harmless occasional thief.

TABLE XXXVIII<sup>1</sup>

CONVICTIONS PER 100,000 PERSONS OF PUNISHABLE AGE IN GERMANY

YEARS	ALL CRIMES AND OFFENSES						FREQUENTLY REPEATED FRAUD	FREQUENTLY REPEATED THEFT
	NO FORMER CON- VICTION	ALREADY CON- VICTED	1 FORMER CON- VICTION	2 FORMER CON- VICTIONS	3 TO 5 FORMER CONVICTIONS	6 OR MORE FORMER CONVICTIONS		
1882 . . . . .	736	259	114	56	64	23	2.8	47
1883 . . . . .	717	267	119	59	68	20	2.9	47
1884 . . . . .	741	284	126	63	72	22	3.3	45
1885 . . . . .	716	290	126	63	74	26	3.5	43
1886 . . . . .	717	303	129	65	79	31	3.8	42
1887 . . . . .	708	312	130	66	81	34	4.4	40
1888 . . . . .	677	307	127	65	80	35	4.4	37
1889 . . . . .	690	340	141	71	87	41	4.8	40
1890 . . . . .	687	362	150	76	93	43	4.9	39
1891 . . . . .	691	382	157	79	96	47	5.6	40
1892 . . . . .	732	417	169	87	107	54	6.0	45
1893 . . . . .	731	427	171	88	111	57	6.4	41
1894 . . . . .	736	459	181	93	120	65	6.8	42
1895 . . . . .	727	473	183	96	124	70	7.2	40
1896 . . . . .	714	483	183	96	129	75	7.5	40
1897 . . . . .	710	494	187	99	129	78	7.8	39
1898 . . . . .	713	506	189	101	133	83	8.4	40
1899 . . . . .	695	506	187	100	133	85	8.1	38
1900 . . . . .	670	494	180	97	131	86	8.5	37
1901 . . . . .	695	528	191	102	141	95	9.2	41

Since a few years the statistical department has tried to carry out a new calculation, that is, to keep an account of the fate of every convicted person.

Released offenders reappear before the criminal court in an astonishingly short space of time; the sooner, the more fre-

<sup>1</sup> After "Statistik des Deutschen Reiches," N. F. CXLVI, I, p. 19.

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quently they have already been convicted. The number of former convictions is naturally a direct proof of criminal tendencies, yet it is surprising to learn that the relapse into crime often occurs within the same year; this happens in 4% of the cases of those already convicted once, in 6% of the cases of those who have five or more convictions against them. It must not be overlooked that the sixth and all additional

TABLE XXXIX<sup>1</sup>

FORMER CONVICTIONS PER 1000 PERSONS CONVICTED BETWEEN 1894  
AND 1896

	No FORMER CONVICTION	1 FORMER CONVICTION	2 to 4 FORMER CONVICTIONS	5 OR MORE FORMER CONVICTIONS
In the first year . . . .	47.4	130.1	189.4	249.4
" " second year . . .	37.6	98.4	144.8	203.3
" " third " . . .	28.5	69.4	95.4	130.9
" " fourth " . . .	23.5	53.6	69.3	84.5
" " fifth " . . .	19.4	41.3	50.4	59.1
	156.4	392.8	549.3	727.2
Not re-convicted during the 5 years following the last conviction . . . .	843.6	607.2	450.7	272.8

sentences usually commit the individual to prison or penitentiary for many years, so that he is deprived of the opportunity for other offenses for a long time.

Of the 98,411 persons, who at the time of their conviction, in the years 1894 to 1896, had already served five or more sentences, 72.7% recidivated in the course of the five years following their last conviction. I can scarcely believe that this number will rise much higher in the next years. Emigration, disease, death, and long imprisonment probably so decrease the number of the persons recognized as habitual

<sup>1</sup> "Statistik des Deutschen Reiches," CXLVI, I, p. 97.

criminals in the years reported, that it would nearly approach 100% if we could take into account the reduction made by the factors mentioned above. This, too, would agree with the experience of prison officials discussed on page 202.

A consideration of the kind of relapse shows us, further, that most habitual criminals are not particular in their choice of crimes and do not limit themselves to one kind or one group of crimes of psychologically equal value. Of the relapses that occurred during the years 1899 to 1901, 37.8-38.1% were similar in nature, 20.6-20.7% were not similar but related, and 41.3-41.6% were neither similar nor related. The very slight variation in the different years, which does not amount to more than 0.3%, shows that we have to do with a regularly recurring phenomenon. It is of great importance for a correct judgment of criminality in Germany to remember that those offenders who have several former convictions against them are least concerned in the relapse into the same or similar crimes, a proof that with these most dangerous criminals there is no one-sided specialization, no professional crime. We find this specialization most frequently in offenses against property; 77% of the thieves, 83% of the swindlers, committed similar crimes again in 1901, while the percentage in assault and battery was only 66, against sexual morality 61, in resistance to state authorities only 29.

Whoever has once got deep into the mire of criminal life is scarcely able to get on to firm ground again. It is quite certain, however, that our penalties are ineffectual, in so far as they are intended to deter from relapse. The oftener efficacy of punishment has been tried on an individual, the less can we hope for success from this means. This is the practical conclusion that must be drawn from the statistics of relapse.

I must confess that I have experienced no "decrease of the disquieting impression that our criminal statistics make at

first," nor can I see any ground for such a decrease. The statistics show a tremendous afflux of socially dangerous persons, which, in the case of adults, it is true, seems to have come to a standstill, but which, in the case of juveniles, the hope of our future, is progressing unceasingly; they prove that, probably with the first, certainly with the third or fourth, conviction, the hope is destroyed of ever reclaiming the criminal from his unfortunate career; finally, they teach that the fall into the abyss usually takes place in a very short time, and that our penal system is unable to check the growing depravity.

The vast army of lawbreakers lives, more or less, at the expense of the peaceful citizen, who year in and year out is called upon to build new prisons, workhouses, and penitentiaries, and who must meet the cost of the maintenance of the convicts.

It is scarcely possible to estimate the damage that the individual suffers through theft and fraud, arson, assault and battery, and sexual crimes; at any rate it is difficult to express it in figures. The attempt must, however, be made to gain, at least, a superficial survey of the situation.

In the year 1909, 797,112 acts were dealt with by the courts as crimes or offenses. These acts, whether or not the person suspected of them were acquitted or convicted, are a better criterion of the injury done to legal security than the number of persons convicted, for every act involves an injury, whether or not the accused person was guilty.

These 798,000 are in reality far below the actual number of criminal acts committed. Only those criminal acts come before the court of which the perpetrator is rightly or wrongly thought to be a certain person; the numerous thefts, the rarer but so much more serious murders, where no evidence can be found on which to base criminal proceedings, all these crimes



are lacking. As is well known, the idea of the "continued act," that is, the supposition that several acts owe their origin to one primary resolution, is very much a matter of subjective interpretation. Wherever the courts assume a continued act, the statistics show, instead of frequently numerous individual acts, one number only. Thus the figures given in Table XL represent only the minimum of damage that honor, health, and property suffered in 1909.

TABLE XL

CONVICTIONS IN GERMANY IN 1909

(From the "Kriminalstatistik des Deutschen Reiches," CCXXXVII.)

CRIMES AND OFFENSES	NUMBER OF OFFENSES
Violence and assault on state officers . . . . .	21,385
Breach of the peace . . . . .	41,085
Inducing women to prostitution . . . . .	3,236
Indecent assaults, etc., on children under 14 . . . . .	8,407
Insult . . . . .	110,830
Simple assault and battery . . . . .	37,622
Aggravated assault and battery . . . . .	93,598
Petit larceny . . . . .	115,844
Petit larceny when frequently repeated . . . . .	22,018
Grand larceny . . . . .	16,862
Grand larceny when frequently repeated . . . . .	6,709
Embezzlement . . . . .	46,922
Fraud . . . . .	51,810
Fraud frequently repeated . . . . .	12,535
Forgery . . . . .	12,446
Malicious mischief . . . . .	30,337
All crimes and offenses against national laws . . . . .	797,112

To characterize the legal situation, I will select only a few examples. The thefts, frauds, and embezzlements include 248,648 single acts; unfortunately we have no idea, even approximately, how great the average damage was in each individual case, but there can be no doubt that national prosperity sustained a tremendous injury through these crimes against property.

It may be objected that the sums embezzled remain in the country, and the amount of the latter's wealth, therefore, remains the same, though a displacement has occurred. But it is by no means indifferent to the prosperity of the people whether an industrious business man is ruined by a faithless employee, or whether the money taken goes the usual way to the saloon or to the prostitute. Without exaggeration it can surely be asserted that stolen and embezzled money generally serves to chain the thief and the swindler to their criminal life with unbreakable fetters, and even, because it is so quickly squandered, artificially to support the world of parasites that live thereby, the receiver of stolen goods, the prostitute, the bookmaker, etc.

It is easier to measure the extent of the damage in the case of sexual crimes. In one year, 8856 children under fourteen were the victims of indecent assaults. This is less than the actual number, for the court often treats the crime as one act even though several children are involved. Now, even though often no physical or enduring injury can be proved, and there is at least the hope that the child may forget the occurrence, yet the memory of this sad experience remains with many children for life, poisons their mode of thought, and is felt to be an ineradicable stigma.

Finally, for a third kind of crime, I am able to give a fairly accurate calculation of the social damage. In my work mentioned on page 77 I was able to prove that during two years the average loss of work of every person in Worms who was gravely injured in an assault, amounted to 7.3 days. If we take this as a measure — and it is certainly not exaggerated — of the material damage due to the serious injuries in the year 1903, we obtain tremendous figures. The number of criminal acts that actually came to trial amounted to 94,883; counting a loss of 7.3 days for each act, we get

a loss of 692,645.9 days, or, counting 300 working days to the year, 2308.8 years! This number, then, represents the actual loss of work annually caused by our knights of the blade.

In this calculation I have refrained from including the insignificant injuries, as well as two cases of manslaughter and five cases of injuries likely to result in death. If we assume that such grave cases are everywhere equally common, we should have 365 deaths every year, and 900 dangerously wounded persons. How many of these are the support of their families? Would a woman, whose husband is brought home to her stabbed by some ruffian, join in Wach's mockery when he asks, whether it is of any use "to keep an incorrigible ruffian in prison as a life-long pensioner of the State, because, if he were at liberty, he might give someone or other a slash"? Such utterances are calculated to rouse the quite unjustifiable feeling that everything in our legal state is sound and satisfactory. The parents whose child is ravished, whose son, their sole hope, is crippled for life, tell another tale. They do not feel that we are living in "well-regulated, satisfactory, healthy legal conditions."

The picture that I have drawn here, the most important points of which I have briefly emphasized, is one of far-reaching public insecurity. The injury done to social life year by year is immeasurable; there is scarcely a gleam of hope for the future when we consider that for years the most important and serious crimes have been steadily increasing, that, above all, our juveniles, the hope of the future, so early and unreservedly embrace crime! We see whither we are steering unless energetic action is begun. But this must be done soon, and it must be purposefully done.

## § 22. Prevention

Our consideration of the menace to legal security at the present day ended in a dissonance, which it is now for us to resolve. Was it, therefore, necessary to paint present and threatening legal conditions so black? Does not such a picture produce a feeling of impotence, that fearfully watches the evil approach without any effort to ward it off? I think not. Only he who looks clearly into the future will find the right course in the present.

When, some twelve years ago, the cholera broke out in Hamburg, our health authorities did not conceal the disease, as was done in many other countries, did not represent the danger to be less than it was; they announced clearly and without reservation what a dangerous plague threatened Germany, and with adamant strictness enforced all the measures that would prevent its further spread. And they were thoroughly successful, as we know. Thus, it seems to me today, in regard to present legal conditions, that the unadorned truth is necessary if we are really to hope at all for an improvement in the unendurable situation.

But the work of the health authorities did not end with the extermination of the cholera. They sought for the causes of the epidemic, and, by providing Hamburg with a better water supply, permanently protected it from similar sad occurrences. This "prevention" has always been considered the first and most important duty of the physician, and I know of no more grateful task for the criminologist and sociologist than the prevention of crime.

The way to improvement is long and tedious, but the goal no longer looms so misty in the hopeless distance. We know the obstacles that separate us from it. If all forces work together with a single purpose, they must succeed in leveling the way, and every step forward must be the starting-point

of new endeavors. Every measure that helps to make the people physically, mentally, and economically healthier is a weapon in the struggle against the world of crime.

Ferri<sup>1</sup> has called the methods used to prevent crime "penal substitutes." This is incorrect, for they are not intended to take the place of penalties, but to make the application of the latter unnecessary. These preventive measures correspond to the duties of social hygiene. Hence the discussion of prophylaxis rightly begins with the chief tasks of social hygiene, the struggle against alcohol and against poor economic conditions, because we have recognized in them the causes of the crimes that are, on account of their frequency, most important.

If we could do away with the custom of drinking, the numerous crimes that can be traced to alcohol and its consequences would be strangled at birth. Not all crimes, and not everywhere. Not all, because we cannot thus destroy the brutality and fighting propensities of some individuals. Not everywhere, as we have seen in Southern Italy, where the knife sits loosely in its sheath, even when alcohol is not there to give the impulse. But with us in Germany a limitation of the present regular custom of drinking would be an infinite blessing to all the many unfortunates to whom a fit of intoxication means lasting ruin.

Supposing that with one blow we could do away with the abuse of alcohol, the number of annual convictions would be reduced by one-fifth, with the omission of the cases of aggravated assault and battery, or at least by one-tenth, if only half of such cases can be attributed to alcohol. Some 50,000 persons less would come before the criminal judge every year, apart from the numerous cases of simple assault and battery, insults, etc., that can be traced to the same cause. This is

<sup>1</sup> Ferri, "Criminal Sociology," p. 112.

no fantastic vision; it might almost be called experimental experience. In Ireland, Father Mathew<sup>1</sup> succeeded, by the power of his personality and his enthusiastic speeches, in making total abstainers of 1,800,000 persons in the course of a few years. The result was, that, whereas, in 1838, 12,096 serious crimes were committed in Ireland, in 1841 the number had sunk to 773, the sixteenth part!

The slight permanence of this unexampled success proves, it is true, that the method employed was not the right one; moreover, with us in Germany, we can never expect to educate the people up to permanent abstinence. Less hopeless, however, is the attempt to teach the broad masses how few of the good qualities generally attributed to alcohol it really possesses, and how great, on the other hand, is the damage it does to health and prosperity. To many, the efforts to do away with the abuse of alcohol, especially to oppose the "occasional drink," seem to be merely a fad, a sort of hobby of uninvited national philanthropists. They are not so to the man who has recognized the relation between the occasional drink and crime, who knows that the pleasure of a convivial evening may have to be paid for by years of suffering, who has seen the extent of the injury that is inflicted on our national prosperity by crimes committed while the criminal is intoxicated.

In addition to instruction given to the people, who should, moreover, have the good example of the educated to follow, other methods of combating the custom of drinking should also be used. An extremely high tax on spirits, and higher ones than at present on wine and beer, will not easily be obtained in Germany. The "drop of cheer," and the "liquid bread," of the poor man, must not be made too dear; agriculturists, too, will make up their minds with difficulty to a

<sup>1</sup> *Baer*, "Der Alkoholismus," p. 395.

restriction of the distillation of spirits. But the party that should dare in our Reichstag to demand higher taxes on all alcoholic drinks might withstand all antagonistic onslaughts, in the consciousness of having thus raised a powerful dam against the destructive stream of crime. "Taxes, and especially all indirect restrictions on the production and sale of alcohol, are much more effective measures than monumental prison buildings."<sup>1</sup>

In this direction much good may be expected from the suppression of home distilleries and the restriction of bar licenses, as well as from the prohibition of the sale of spirits between Saturday noon and Monday, as it exists in Norway, from the suppression of drinking in places of employment, and from the payment of wages in the middle of the week.

All these measures, to which many others might be added, are looked upon by the working population as interference in their habits of life. It is impossible to limit drinking without also limiting the workingman's visits to the saloon, the only place where he, especially if unmarried, experiences any degree of comfort. To bring about an improvement in the custom of drinking, then, efforts must begin here. A place must be provided where workingmen, without drinking and without regarding drinking as an end in itself, can find good and cheap food, light, warm, comfortable rooms, and entertainment, where they can also take their wives and children without being in constant fear of brawls. Popular reading rooms, popular concerts, the opening of the museums in the evening and on Sunday, gymnasiums and halls for athletic games, will then, in conjunction with the restaurants described above, breed in a large, and, especially, the best part, of the working class a distaste for the smoky, noisy saloon, and will make the habitual visit to the public-house dispensable.

<sup>1</sup> *Ferri, loc. cit.* p. 185.

But this alone will not relieve the wretchedness of the lower classes. Comfort and entertainment to be found outside may, indeed, give a man some pleasure in life, but they do not make his own home unnecessary, or at least should not. Here the methods of the indirect struggle against alcohol converge with the efforts to provide hygienic dwellings, where, in the interests of health, and, above all, sexual morality, there shall be no renting of beds and no living together of different families in small, inadequately ventilated and furnished rooms. The construction of small single houses instead of great tenement barracks, the provision of modest, but neat and clean, dwellings, if possible with little gardens, will help to keep the workingman with his family, and will soon make his own home pleasanter to him than the public-house.

The broad masses of the people must be educated to appreciate anew the value of family life, the desire for knowledge and higher intellectual pleasures must be aroused and gratified. The success of all these steps, which are only indirectly aimed against the abuse of alcohol, will then, perhaps, be even more important and permanent than the anti-alcoholic movement itself.

The fact that theft is largely dependent on the economic situation, compels us to turn our attention to this question too; not, however, in order to pursue unattainable, foolish visions, and to guarantee every man a certain and sufficient income. The difference in the human temperament as regards saving, economizing, and squandering is so great that the artificially leveled inequalities would soon reappear. It is impossible to put an end to desire; it is one of the qualities of human nature that is not satisfied with what has been attained, that is not bound to the minimum required for existence, but appears in every situation. It is strongest, of



course, where it is directed towards protection from cold and the gratification of the simplest needs of life.

Here too, then, we must apply the lever to mitigate the greatest misery. Not by private benevolence alone, although it finds the widest field for its activity just among the very poorest of the poor. In the first place, the State and the municipalities must do their duty. Care of the sick and incurable, regulation of the aid given to the poor, free employment offices, insurance against disease, accident, and unemployment, and, in the country, against diseases of cattle, and against hail and fire, compulsory savings banks, are only a few of the points at which attacks can be made to improve the welfare of the people and protect them from the worst misery. In economic crises, during which even industrious workmen lose their employment, in times in which provisions rise to prohibitive prices or the cold is excessive, the methods mentioned above fail. Then temporary employment, the distribution of bread and coal, the opening of stations where people can warm themselves, lodgings for those without shelter, must all do their part together with the liberality of the prosperous.

We cannot exterminate theft, but we shall save the best among the criminals, the individuals who are driven to steal by desperation and despair.

The unfortunate position of the children who, of illegitimate birth or the product of drunken families and criminal environment, from their earliest years fall victims to mental and moral corruption, has always challenged compassion and energetic action. It would be well if we could prevent the procreation of such usually physically and mentally inferior children. This is the purpose of the widely desired prohibition forbidding epileptics, drunkards, confirmed criminals, and the insane to marry. We cannot expect much of

such a measure; we can, indeed, prevent marriage, but not the procreation of children, and precisely in the lowest strata of the people, instead of the legitimate marriage, illegal sexual relations would flourish still more luxuriantly. The time is probably still distant when procreation will be prevented by castration, although this proposal has already been made in all seriousness.<sup>1</sup> For the present, then, our care must begin at the point where we see children growing up in criminal surroundings.

Almost equally menaced are those children who are the result of marriages which, in consequence of extreme poverty, consist only of an outward living together and the procreation of, usually, numerous progeny, — marriages in which the husband is at work in the factory from early till late, and the mother spends her times at the wash-tub, or, as well as her husband, in the factory. No one is there to look after and bring up the children; at best, they are left to the care of some neighbor or to themselves, but often enough they begin at an early age to work too, delivering bread and newspapers, selling flowers and matches. The street supplements the events that take place before the eyes of the children in the overcrowded home. Precocious, and without education or training, the poor little mortals are an easy prey to the temptations that surround them on every side.

Our civil code has left it to the national legislation to provide for these neglected children. Fortunately, the separate States at once realized the seriousness of the situation, and in quick succession special laws followed one another, allowing State intervention even before a child or a minor has shown by crime that his training has failed.

<sup>1</sup> *Naocke*, "Die Kastration bei gewissen Klassen von Degenerierten als ein wirksamer sozialer Schutz" (Arch. Krim. Anthr. III, 58).

The Prussian law of July 2, 1900,<sup>1</sup> relating to the "State education of minors" avoids the expression "compulsory education," used by most of the States, so that there shall be no danger of this kind of education being regarded as a substitute for penal measures, and a stigma attach to the child. This would be very unjust, inasmuch as we cannot admit that the children suffer for the guilt of the parents; besides, in many cases, the neglect is not due to the lack of will on the part of the parents, but to their inability to bring up the child properly because they are prevented from doing so by disease, absence, and dire necessity.

It is true the name does not help matters, if the whole proceeding is not rightly carried out. Even though a number of mistakes may be regarded as the unavoidable consequence of the short time that the system has had in which to develop, yet it cannot be denied that serious and experienced observers say quite openly that the State education law does not fulfill the expectations to which it gave rise.

Perhaps expectations were too high in some respects, because it was not taken into consideration and, indeed, could not be foreseen, how great the proportion of mentally inferior children is who require this kind of education. Among the children who were being given special educative training whom Toppel<sup>2</sup> examined, he found 66.87% mentally inferior. In the light of this fact it is interesting to learn that an official enquiry put to fourteen institutions harboring 544 children called forth the reply that there were no psychically defective children among them! There can be no doubt that the difference here lies, not in the material, but in the judgment, which is explained by the

<sup>1</sup> *Ludwig Schmitz*, "Wegweiser zum preussischen Fürsorgeerziehungsgesetz," 2nd ed., Düsseldorf, 1901, L. Schwann.

<sup>2</sup> *Toppel*, "Fürsorgeerziehung und Psychiatrie" (Allg. Zeitsch. f. Psych. LXVI, 583).

difference in the special education of the persons forming the judgment. It is essential, however, that, if special State education is to be properly carried out, the institution physicians and the superintendents of the institutions should have a preliminary psychiatric education and some degree of psychiatric ability. This is shown by Kluge's <sup>1</sup> experiences; for he was able to overcome difficulties which would have proved insurmountable to the superintendents of the special educational institutions.

Unfortunately, however, in addition to these defects, there are many other things to be desired without which the success of the whole scheme is questionable. Admission to an institution must be more speedily procurable, there must be less red tape about it, an individual's ruin must not be allowed to take place because of the expense of preventing it, the foolishness or obstinacy of parents must not be permitted to undo at one blow the good that has been acquired in years of training.<sup>2</sup> There is still much to be improved in the proceedings that lead up to the child's admission to the institution, as well as in the special education itself. But, for the most part, the errors are capable of correction, and so we may hope that Kohlrausch's <sup>3</sup> fears are unfounded, when he says: "It is just the idea that we are concerned with a social hygienic, a preventive, measure, that is seemingly fading away."

The training of neglected children in special educational institutions is, of course, only one of the possibilities of preventing complete ruin. If the offspring of criminal families, children who are themselves already affected, are too numer-

<sup>1</sup> *Kluge*, "Über die Behandlung und Unterbringung psychisch abnormer Fürsorgezöglinge" (MSchrKrimPsych. II, 232).

<sup>2</sup> *Klumker*, "Erfahrungen mit der Fürsorgeerziehung" (MSchrKrimPsych. I, 640).

<sup>3</sup> *Kohlrausch*, "Die Resultate der Kammergerichtlichen Rechtsprechung über das Fürsorgeerziehungsgesetz" (MSchrKrimPsych. I, 373).

ous in one institution, the other children, who are still quite healthy, are in too great danger of psychic infection, and for this reason it has been decided that they may quite properly be put in the care of suitable families. If there were only enough of such families! But we must not forget that a family's motives in assuming the care of a neglected child are not always pure, that the hope of gaining another working member in the family often plays a part.

Hence we must turn to the existing educational institutions of churches, societies, and private persons. I personally have the greatest hopes of the activity of those guardians who have to supervise the "natural and regular growing up into social life."<sup>1</sup> When, with the increased application of this special education, the circle of those persons who are active as guardians in accordance with the regulations is growing ever wider, we shall have a staff of helpers who, with their interest in the individual children, will also become interested in the movement itself and in the whole prophylaxis of crime. They need fear no lack of work.

Here is the place to speak of the care of released convicts,<sup>2</sup> which is also directed towards preventing a relapse into crime. It is often subjected to a harsh criticism, which Ferri<sup>3</sup> expresses in the words: "It must not be forgotten what kind of an impression this support of criminals must make on the millions of honest workmen who are less fortunate than the released convicts." This view rests on a misunderstanding of the aim in providing shelter and work. If, on the expiration

<sup>1</sup> *Krohne*, "Erziehungsanstalten für die verlassene, gefährdete und verwahrloste Jugend in Preussen," Berlin, 1901, Carl Heymann's Verlag, p. XXXIX.

<sup>2</sup> According to *Rosenfeld* ("Zweihundert Jahre Fürsorge der preussischen Staatsregierung für die entlassenen Strafgefangenen," Berlin, 1905, p. 8), the oldest "Fürsorge" decree is the decree of Frederick I of Prussia, of August 28, 1710.

<sup>3</sup> *Ferri*, "Das Verbrechen als soziale Erscheinung," p. 414.

of his sentence, we turn the released prisoner into the street, we simply deliver him over to the mercies of society. It is very difficult for the released prisoner, alone, often in a strange city, dependent entirely on himself, to find work; the money he has earned is soon gone, he grows hungry, and all his good resolutions quickly disappear. Or perhaps he spends the money at once in drink; then his reappearance before the criminal judge occurs even sooner. "Nothing is more dangerous than the few holidays after expiated punishment, which, devoted to hunting for work and shelter, lead to loafing, drinking, and the forming of bad acquaintanceships, and make the released prisoner refractory, rude, and inaccessible to good influences."<sup>1</sup>

This must be prevented. The prisoner must not receive into his own keeping the money he has earned by his industry; for this reason the term "work premium" was changed into "gift for work." The money is not paid to the man, but is sent to the societies that care for released prisoners. It is easy for them to prevent its being foolishly wasted; moreover, they are able, by procuring tools and suitable clothing, paying the arrears of rent for the family, etc., to provide against the new life's being begun with debts.

The most important thing, however, is the procuring of work, and it is necessary that this should be done before the prisoner is released, so that the seriousness of work may help to sustain him immediately on his dismissal, and facilitate his re-entry into society. The endeavors of the societies for the care of released prisoners are not always crowned with success. This is partly due to the ways of the released prisoners themselves, and partly to lack of energy of the organs selected to do the work, which do not all fulfill their social obligations with complete understanding. Many a released

<sup>1</sup> Krohne, "Lehrbuch der Gefängniskunde," p. 281.

criminal might be brought back to an industrious, honest life, if the way were made easy for him as often as now obstacles are found in his path. Krohne<sup>1</sup> graphically describes the struggle of a criminal for his civil rehabilitation. "It is really heartbreaking to watch such a death struggle, and if society closes its eyes to it, it will nevertheless soon be unpleasantly reminded of it; for then, like all convulsive movements, this struggle makes itself felt externally. The criminal is not dead, he continues to live in his children, in the young people he has met in prison and in lodgings. That is the criminal bacillus that goes on spreading. By watching it, society can see how it injures itself if it does not do everything possible to reclaim the delinquent, or, if that is impossible, at least to give him a quiet place in which to die, instead of affording him the opportunity of infecting others." Such endeavors, apparently, benefit only the criminal who is helped, but, in reality, public security profits still more.

The prophylaxis of crimes includes also the development of the police, and energetic prosecution. A vacillating man, who knows that punishment will follow swiftly on the heels of his crime, is less likely to fall than if others' experience has shown him that he has the prospect of escaping punishment. Though this may not be a highly ethical point of view, yet we cannot afford to disdain anything that will help us in the struggle against crime. Most demoralizing of all, are threatened punishments that exist only on paper, or are but seldom used in comparison with the frequency of the offense, as, for instance, criminal abortion, sodomy, the procuring of women for prostitution. They undermine the general feeling for the law slowly but surely, instead of strengthening it.

And strengthening is what it urgently needs. When some

<sup>1</sup> *Krohne* (Mitteilungen der I. K. V., VI, 567).

sensational court trial is taking place, some unusually horrible murder is committed, some unheard-of swindle is perpetrated, the indignation of the whole people is so unanimous that we might hug ourselves in the illusion that the people's feeling for the law is highly developed. Unfortunately, however, it fails in the course of everyday life as regards minor transgressions of the law. The "market penny" which the cook who does the marketing keeps for herself, the adulteration of milk, the giving of short weight, the whole field of dishonest competition, betray as undeveloped a feeling for the law, as do wrong declarations of property to be taxed, and smuggling goods through the customs.

The last-named example shows that slow improvement is taking place. Not many years ago, in passing the frontier into Austria, Italy, or France, one could be fairly certain that, once over the border, the undeclared cigars would be brought out from their hiding-places with a certain pride, frequently that elaborate accounts would be given of how the vigilance of the officials had been avoided. This is now generally recognized as not respectable, and, though I believe that such smuggling goes on often enough, yet it is no longer done so publicly and with such an attitude of resisting the unjustified demands of the State. Slight as this sign is, I yet believe it to be a symptom of a finer sense for justice and injustice.

The more sharply our legal consciousness rejects, as inadmissible, every deviation from the straight path, even where neither criminal judge nor statute threatens, the more surely can we reckon on a general refinement of the feeling for right. To this end, according to individuality, descent, and education, the home and school, church and press, must work together. If I mention the press next to the school and the church, I should explain why I lay so much stress upon it.



Above all, because it is harmful, and, in two directions. The published accounts of trials giving, as is commonly done, the names of those concerned, spread the name of the convicted person abroad, and thus not only make it more difficult for him to regain his place in the world, but also injure to a much greater extent his relatives, who often have much to suffer from this source. Moreover, the description of crimes does not exactly serve to improve morality. I need only call to mind the Sternberg trial, the details of which formed a highly undesirable subject for conversation.

The curious phenomenon, that certain unusual deeds of horror generally follow one another at short intervals in different places, may probably also be traced to the — admittedly unintentional — effect of the newspaper reports. We are concerned here with a phenomenon of pathological nature. A great many of the most infamous sexual crimes are committed by epileptics in abnormal states. The ideas and notions of the man in his normal state often, however, play a part when he is in an abnormal condition; thus, his remembrance of newspaper descriptions of dismembered corpses, ripped open bodies, arson, and murder, may turn the confused destructive fury of the epileptic into dangerous channels. Weak-minded persons, too, especially juveniles, may easily fall victims to their desire for notoriety, and feel themselves flattered if their heroic deeds are described in the paper, possibly even their picture printed in the so-called "police journals."

It is clear that the press can do a great deal of harm in this way; also, the knowledge that stabbing, swindling, sexual crimes, take place daily gradually makes the people apathetic, so that a crime must be particularly sensational to arouse their indignation.

It should be the duty of the press to point out to society

its share of guilt in the crime, and so to arouse everyone's conscience that he realizes what he owes to society at large. When, in times of financial panic and bank failures, public indignation stones the guilty, it should be made clear that the desire of each individual for the abundant profits of certain commercial papers is also to blame for the wild speculations of the bank directors. At the time that an unfortunate ending of a drinking bout cost an officer his life, it would have been the duty of the press not to condemn so much this particular case as the general custom of drinking, that daily demands victims, though not under such tragic circumstances.

The press is such an efficient instrument for developing the feeling for justice because it can gain its effect by continual repetition without being monotonous. The influence of the school, unfortunately, ceases too early, and those persons who most need religious influences are often the very ones that hold themselves aloof from them. Nevertheless, it would be very regrettable if all these factors should not work together harmoniously to the same end.

### § 23. Responsibility

Our legislation is built up on the basis of the doctrine of the free determination of will. "The right of the state" — so says the draught of a penal code for the North German Federation — "not only to adopt measures of security against the criminal, but to punish him, rests on the general human opinion that the mature and mentally sound man has sufficient will power to repress impulses to criminal acts, and to act in accordance with the general consciousness of right." It is not my task to discuss here, at length, the inexhaustible theme of free will, but I cannot pass it by entirely, as long as eminent criminologists continue to hold to that

doctrine as the "basis of criminal law,"<sup>1</sup> and, indeed, to adhere to the extreme form, entirely unlimited freedom of the will.

The discussion about the freedom of the will is always carried on in a somewhat irritated key, as are all arguments about questions of faith and perception. While Schopenhauer, for instance, treats the adherents of free will as "superficially thinking minds," in another quarter it is more the moral qualification of the determinists that is doubted. The Bavarian Minister of Public Worship, von Landmann, in his opening speech at the third International Psychological Congress, in Munich, in 1896, felt himself constrained to say, with unmistakable reference to von Liszt's address on "Responsibility in Criminal Law":<sup>2</sup> "I hope that the psychological congresses will aid in allaying the great danger to the public life of the cultured nations which might arise from certain psychological theories, and I am confident that these congresses will not shake, but rather re-enforce, the old belief in a man's responsibility for his acts."

Disputed scientific questions cannot be decided with passion. As we see that a number of our most eminent thinkers adhere to the doctrine of free will, Schopenhauer's view seems to me to be as unjustified as the opposite attack of those who fear that the relinquishing of free will will mean the collapse of ethics and morals, law and society, State and church. They forget that St. Augustine<sup>3</sup> and Luther denied the doctrine of free will.

We shall see that, with the deterministic view, it is still

<sup>1</sup> *Birkmeyer*, "Gedanken zur bevorstehenden Reform der deutschen Strafgesetzsgebung" (Archiv für Strafrecht, XLVIII, 87).

<sup>2</sup> "Dritter internationaler Kongress für Psychologie," Munich, 1897, J. F. Lehmann, p. 18.

<sup>3</sup> *Petersen*, "Willensfreiheit, Mord und Straffreiheit," Munich, 1905, J. F. Lehmann, p. 14.

possible to maintain the responsibility of a man for his acts, — though from an entirely different standpoint, it is true.

The standpoint of the natural sciences, and this is the only one I can represent here, varies considerably from "general human opinion." We must hold fast to the fact that an effect can take place only if it is preceded by a cause. Consequently the phenomena which we call acts of will must be preceded by a causal activity. This activity goes on in our brain, hence is dependent on the latter's condition.

A "free will" that acts without cause, or, more comprehensibly, without motive, does not exist. To be sure, it cannot be denied that the weighing of the motives for and against, and the final decision, are bound up with a feeling that may easily give the observer the illusion of "free will." And the more easily and clearly is this illusion produced, the less careful the observer is in the analysis of the processes of his consciousness. And yet the recognition of the law of causality compels us to give up this illusion, flattering as it is to self-love and conceit. The supposition that acts can be caused by a will that is entirely beyond and removed from motives, would lead to the most fantastic consequences. "What would become of this world if necessity did not run through all things and hold them together? A monstrosity, a pile of débris, a distorted visage without sense or meaning — the work, namely, of true and pure chance."<sup>1</sup>

Every act is the necessary final result of the effect of a series of motives on a certain character. We are far from being able to view this origin and development in its whole course. But, just because we are affected by a number of motives which we do not know, which, perhaps, practiced introspection may lead us merely to suspect, we should

<sup>1</sup> *Schopenhauer*, "Über die Freiheit des menschlichen Willens," Leipzig, Philipp Reclam, III, p. 441.

beware of applying to others the thoroughly subjective measure which we gain by, ourselves, measuring our own thought, and of trusting our own decision too confidently.

The reaction to an outward or inward irritant is extremely different. It is dependent on individual character. But is it true that the character is not "something given or even forced upon the individual by causalities, but a peculiarity freely acquired by everyone, of his own knowledge, judgment, and choice, the product of free will in the education of self"?<sup>1</sup> These words bear witness to a tremendous underestimation of the natural disposition given to the individual, and existing at birth. Externally, intelligence is the factor in natural disposition that is most striking, and consequently it is often pushed too far into the foreground. The ability to experience and to assimilate can be measured by a fairly high degree of reliability. We are not so clear about the part played by the emotions;<sup>2</sup> even if we do not agree with Wundt in making, in every case, the emotion the starting point of the act of will, we must not underestimate its influence on the single act and on the formation of the character. The intensity of emotional feelings is certainly a quality that can be much changed by education and experience, but, just as certainly, it is not always thus changed. The intellect is far more easily affected by experience, and is influenced by environment and schooling, example and instruction. At a definite moment, however, that is, at the time of the crime, the character of a man exists as a complete and finished one, not to be changed until after, or except by, the eventual decision. At this moment, then, a "free" alteration of character is no longer

<sup>1</sup> *Orloff*, "Die Verminderung der Willensfreiheit im Determinismus" (*Zeitschr. f. d. ges. Strafrechtswissenschaft*, XII, p. 327).

<sup>2</sup> *Hoche*, "Die Freiheit des Willens vom Standpunkte der Psychopathologie," Wiesbaden, 1902, J. F. Bergmann, p. 14.

possible, the act takes place as the necessary result of the outward and inward motives, working on the existing character.

Having established this, we must not pause, but must ask, further, how is a character formed? We may leave the fact aside, that environment, family, instruction, religious, social, and ethnological influences, certainly cannot be freely formed by the individual according to his desire. But we ask in vain, why do the thoughts and feelings of the one individual cling mainly and enduringly to ethically good, altruistic ideas, while the same ideas rebound ineffectively from the mind of another? Let us try, without prejudice and with the greatest possible objectivity, to follow the character development of an individual backwards to the point at which a "willing" of the character is possible. By doing this, we find ourselves at our point of departure; we must halt at the natural disposition, intellectual and emotional, and confess that the development of character also is not a product of free will. Whether we, then, ascribe the final result more to the inadequate organization or to wrong development, is indifferent to the fact: a man cannot form his character as he desires.

If penal acts do not appear as the expression of free will, but as the result of complicated processes, which are dependent on the organization and development of the brain, on intelligence, experience, and emotional excitability, on the one hand, and, on the other, on external conditions, — what right have we to make a criminal responsible for his acts?

Study of the world of nature shows that every organism responds to stimuli of sufficient strength. Reactions take place especially in response to irritations which threaten the existence of the individual. The motive of every defense against attack is personal well-being and self-preservation. Thus the single cell resists attack, as does every animal,

including man; hence the original form of the development of punishment was simple defense. We can still see that today in races on a low plane of culture.

A later development is the reaction that does not take place at the moment, but is delayed and appears as revenge. Both forms, the direct as well as the delayed, the defensive and the revengeful, function confront us on two planes, of which the lower, the individual, progresses to the social. The defense and revenge of the attacked individual easily exceeds the limits of the necessary, and thus gives rise to new counter-reactions; a typical example is blood-vengeance, which led to the complete extermination of whole families.

When a larger organism, that is, the tribe or the State, takes over the office of defense, a more practical estimation of the reaction necessary to a certain attack is arrived at. Those persons who were at the head of such an organism undertook the decision in difficult cases and provided, on behalf of the tribe or State, for the execution of the reaction.

A new element was introduced by the priests: "In their hands," writes Ferri,<sup>1</sup> "what was originally individual or tribal revenge assumed the character of divine revenge, and, from a purely defensive function, came to be a moral and religious one. The consequence was that, as in all ecclesiastical, religious formations, a strict formalism and a mystical idea of expiation made themselves felt."

With the development of the State, the judicial power once more slipped from the priests' grasp into the hands of laymen, but the idea of expiation was retained; the penal power represented simply a retributive measure. This principle, which was not originally inherent in punishment, cannot be carried out, as will be shown, and the criminal codes, too, that are

<sup>1</sup> *Loc. cit.* p. 156.

built up on it are full of inadequacies, compromises with other views, and contradictions.

We cannot do without the defensive response to attacks. Both the individual and the totality of persons that we know as the State and society, require protection for their existence. Thus, quite apart from all the alien elements of the original defensive reaction, we still, from an entirely different point of view, come to maintain the responsibility of the attacker. I agree with Ferri: "The natural foundation and the fundamental principle of the repression of crimes exists solely in the necessity for self-preservation, which applies to every individual and every social organism."

From this standpoint, which sees in crime only the injury to society, and in punishment only the necessary social reaction against it, the struggle against criminals must be carried on. We thus depart from the moral, and in its place set up the social, responsibility. This is not so strange to our legislation as it appears. In the case of minors, and juveniles acquitted because of lack of comprehension, our penal law provides a compulsory education, lasting for years, even when the offense is harmless, and although the person who committed it is not regarded as accountable. Still clearer is this social reaction in the case of beggars and prostitutes. Prostitutes who frequently offend against the police regulations, who, for instance, pass through certain forbidden streets, show themselves after sunset, etc., are committed to the workhouse for one or two years. It is the same with beggars and tramps who are repeatedly found without work and shelter. The effect of this regulation can only be measured by the fact, that the average penalty imposed for indecent assaults on juveniles is about one to one and a half years. Now, if the vagabond who is afraid of work, and the prostitute, are sent to the workhouse for one or two years, it cannot



be that this course is dictated by moral indignation about their offense; it must be explained as the State's method of defending itself against these parasites.

The necessity for protecting society has also caused the State to intervene, even where sympathy with a psychic disease restrains all feeling of disapproval. The lunatic, whose mad ideas menace public safety, is taken care of in an insane asylum, even if, because he entirely fails to realize his condition, he feels this, often life-long, confinement, to be cruel in the extreme. Though he may excite our deepest pity, yet no one would feel his confinement to be inadmissible. Recently our legislation has gone even a step farther. The insane person who sets fire to a house is not, indeed, convicted of arson, but, according to § 829 of the Civil Code, he is obliged to be kept harmless "as equity requires." Although this belongs in quite another field, that of the civil law, it nevertheless proves that the social responsibility of a person who is irresponsible in criminal law is not incompatible with our legal views.

Many people have come to regard the giving up of free will as identical with the giving up of the feeling of responsibility. But this does not correspond to the general feeling. "With or without the belief in free will, unpleasant feelings arise in me, if I belong to the normal majority, as soon as my behavior departs from the course that I feel, with subjective certainty, to be the right one; and this stirring of conscience guides me, whether I believe the conscience to be the indicator of an intelligible character or not. I feel myself to be the perpetrator of my deeds and must be accountable for them; this feeling of responsibility is not changed in the least by my scientific conviction that the nature of this feeling too is necessarily determined."<sup>1</sup>

<sup>1</sup> *Hochs*, "Die Freiheit des Willens vom Standpunkte der Psychopathologie," Wiesbaden, 1902, J. F. Bergmann.

This feeling of responsibility dominates the normal man, — in fact, as Hoche and Mohr<sup>1</sup> have proved, it is not always lacking in the insane, whom even the most fanatical indeterminist would deny free will. From this, we may conclude that there is nothing antagonistic to our feeling when the State presumes to hold us responsible for our acts. One thing, however, must be admitted, if we no longer regard character as the work of our will, and that is, that our feeling for the evil-doer should be rather one of pity than of moral indignation, a view that our own self-approbation often makes it difficult to take.

And that is the only point in which we differ from the moralists and the representatives of free will. We, too, certainly do not wish to allow the criminal to follow his criminal tendencies unmolested, we too desire an energetic reaction against the disturbers of the legal peace. If a feeling of compassion runs through all our measures, it can yet exercise an influence only in so far as the interests of the individual can be combined with those of society, but never further.

This compassion, however, must never degenerate into weakness. More important than the right of the individual, is the right of the totality; whoever injures it, must suffer in consequence. And, just as pity does not prevent our removing the insane from society, just as we protect the community from the infection of leprosy, so too our course, as regards the socially dangerous, must be dictated by this point of view: the protection of our health, our honor, our property. But will it be possible to go on building on this basis? That experience alone will show.

To disarm an important criticism at the outset: we do not demand that a new criminal law shall be draughted at once,

<sup>1</sup> Mohr, "Willensfreiheit und Psychopathologie" (MSchrKrimPsych. I. 733).

which shall throw overboard everything that at present exists, but we do demand that people shall not cling to the old with persistent prejudice merely because it is old. Experience teaches us that great revolutions are slow in taking place, that the enthusiasm of the advocates of the new finds its natural corrective in the conservatism of the adherents of the old, — and this is well. For then the way to improvement is gained step by step, and every advance rests on a sure foundation.

#### § 24. The Purpose of Punishment

The makers of our criminal laws have avoided setting up a definite theory about the foundation and nature of punishment. Science, therefore, has tried the more eagerly to find one. But "it must be affirmed that no uniform, generally recognized, and universal theory of punishment, for all ages and peoples, exists."<sup>1</sup> And yet, neither the theorist, the judge, nor certainly the legislator, and, least of all, the official in whose hands lies the carrying out of the sentence, can do without one. He must know what he is to do with the delinquent. The present state of the matter is theoretically this: the judge pronounces a sentence of definite duration, and delivers the delinquent up that the sentence may be executed; that is the end of the case, as far as the judge is concerned. He has nothing to do with the way in which the sentence is executed. Many judges have perhaps heard lectures on prisons and prison discipline, but there are numbers who have never visited a prison, and very few who have a clear idea of the execution of the sentence.

Krohne, who is most intimately familiar with the way in which penalties are carried out, is moved by his experience to

<sup>1</sup> *Von Holtzendorf*, "Die rechtlichen Prinzipien des Strafvollzugs. Handbuch des Gefängniswesens." Hamburg, 1888, I, p. 384.

exclaim: "Even if you have the best law, the best judge, the best sentence, and the prison official is not efficient, you might as well throw the statute into the waste basket and burn the sentence!"<sup>1</sup> Not from the law, then, may we expect an improvement in legal security, but from the execution of the punishment. There lies the centre of gravity of the struggle against crime.

As, in von Holtzendorff's opinion, there can hardly be three eminent teachers of the law in Germany who are completely agreed as to the final formula of criminal law, it cannot possibly be the duty of the physician to take a stand as regards all the existing theories, an attitude which merely ends in his setting up a new one. Only the most important points of view must be mentioned. Von Holtzendorff assumes that every offense produces three effects, and that popular feeling demands of punishment three purposes that shall correspond to these three effects: *a.* The effect of anger and of the feeling of revenge; the penalty acts as satisfaction or as expiation; *b.* the effect of fear produced in those persons who have not been injured; the purpose of the punishment is deterrence, deterrence of the evil-doer as special prevention, deterrence of all the dubious elements in the people as general prevention; *c.* the effect of sympathy with the criminal, who is tortured by remorse, or has been rendered innocuous, or has been physically overpowered; the suffering of the penalty is intended to lead to improvement.

The idea of expiation, of retribution, corresponds roughly in its meaning to "an eye for an eye,"<sup>2</sup> to the measuring of the punishment by the greatness of the objective guilt. Schmidt<sup>3</sup>

<sup>1</sup> *Mitteilungen der I. K. V.*, VI, 364.

<sup>2</sup> *Birkmeyer*, *loc. cit.* Note 60.

<sup>3</sup> *Richard Schmidt*, "Die Aufgaben der Strafrechtspflege," Leipzig, 1895, p. 286.

quotes Anselm Feuerbach's pathetic words: "It may be of advantage to the State to spare certain criminals! Chance causes may move a man to crime; he only needs to be warned, to be disciplined, and he will be the most upright citizen. If he falls under the penalty of the law, he is lost forever, and thus the State is deprived of a useful, perhaps necessary, member. But it is still more advantageous to the State for justice to show itself to be inflexible, that it should not be bent to secure chance advantages, thus undermining the authority of the laws and making a childish toy of the threat of punishment." This is the point of view of the words: "fiat justitia, pereat mundus."

The adherents of this view are probably few in number. They, like Schmidt, point to the legal consciousness, and the people's feeling for justice, as a proof of the necessity of adapting the punishment to the social significance of the offense. It will readily occur to us all, however, how often the feeling of the people fails to agree with that of the judge. I merely wish to touch on a few points on which the average judgment of the people differs from that of the law: popular judgment does not understand why the unsuccessful attempt should remain unpunished, why an accessory to a criminal act, the actual perpetrator of which is acquitted on the ground of insanity, should be allowed to go free; in fact, the feeling of revenge even demands that an insane person shall be punished, if his act is one that particularly excites popular passion; we see this in the convictions of insane persons by juries and, occasionally, by judges, when they disregard the unanimous reports of alienists. Such wide disagreements between popular feeling and the laws as were seen in the case of larceny of electricity need not be considered, because the differences there can easily be remedied by suitable supplementation and explanation of the sections of the statute.

The appeal to the legal consciousness of the people also fails in the case of such excrescences as witch trials and the excesses of the Commune. But if the people, with their naïve, often short-sighted and one-sided feelings, are headed in the wrong direction, it is the duty of science to correct and enlighten them.

But many of the most important fundamental principles of our criminal law are incompatible with the theory of retribution, which demands a punishment equal to the objective guilt: such are, for instance, the heavier penalty for the recidivist, extenuating circumstances, the statute of limitations, conditional release during the carrying out of the sentence, the lighter punishment of juveniles, the curtailment of the accumulated penalties when an offender is sentenced at the same time for several offenses, a system which Ferri harshly but not incorrectly describes as "selling at the wholesale price." All these things are the result of the consideration of the subjective guilt of the perpetrator, in addition to the objective injury to legal values. The modern representatives of the theory of retribution also desire to do this; for, "if the punishment is to be entirely proportionate to the guilt, it must take the guilt, not only as it is objectively embodied in the crime, but also in its subjective source in the mind of the criminal, in his motives, and in his attitude before and after the deed, more fully into account."<sup>1</sup>

The judge is thus confronted by one of the most difficult tasks conceivable, one that is frequently impossible, the finding of a formula that unites the subjective and the objective guilt. The solution of this difficulty is above all, impossible when the success of an act is either greater or less than was intended. In the case of an attempted murder which fails because the murderer does not use the poison properly or miscalculates

<sup>1</sup> *Birkmeyer, loc. cit.* p. 67.

the range of a revolver, when an attempt at arson fails because the offender did not notice that the hay was wet, when a burglar opens an empty safe, — in all the mere attempts at crime, — the damage done is often slight or entirely lacking, while the subjective guilt often stamps the act as particularly dangerous in the sense of retributive justice. The opposite is the case with liability for the consequences which makes a man answerable for events of which he has been the cause in a slight degree only. If a fight leads to the death of one of the participants, not because he was seriously injured, but because he did not take care of a harmless scratch and died of the blood poisoning that ensued, his death is laid at the door of the man he fought with. The same is true of the student whose opponent neglects a slight sword-cut, of the pedestrian whose falling match causes a fire in which people perish. What determines the amount of guilt? The result, the subjective guilt, the general make-up of the offender?

We find ourselves entirely at sea as soon as we — still led by the fiction of a just retribution — attempt to consider the individuality of the offender. Birkmeyer, who considers the reform of the criminal law possible only from the point of view of the idea of retribution, and may, therefore, be considered a typical representative of this school, goes so far as to demand, with von Weinrich, that: "The judge should know more about the personal circumstances of the accused, that he may be able to weigh rightly the degree of his guilt. He must know whether, besides the accused himself, his parents or nearest relatives have ever been convicted of serious crimes, whether they were intemperate, whether mental disease is hereditary in the family, — moreover, what has been the training and education of the accused, the course of his life hitherto, at least its main events, his family circumstances, his occupation, with what persons he associates and

what his other social relations are, and all this he must know more accurately than is at present usual." <sup>1</sup>

I must confess that I do not see what vestige of a "just retribution" can remain if the judge penetrates into the deepest causes of a criminal act to the extent Birkmeyer demands. The sad picture of the child that has absorbed, almost with its mother's milk, contempt for everything that others revere, that, neglected and callous, has reached the age when it can feel the severity of the law, will rather arouse in the judge a feeling of compassion than one of indignation. And when he, further, takes into consideration the external circumstances that have deprived the weakling of his last moral support, then, indeed, it will be difficult for him to decide who bears the greater guilt, the individual or society. The more seriously the judge enters into his task, the wider will be the circle of circumstances surrounding the crime that he must take into account. I have not described the social causes of crime so carefully for nothing; they should prove that a crime, apart from the directly recognizable, purely outward conditions, is influenced by numberless factors which are of greater significance in judging it than is the fact of bad inheritance.

An administration of justice that pays no attention to this, or knows nothing of the social conditions of crime, will be little more than a mechanical activity, it will be an administration of the letter, not the spirit, of the law. To these intricate preliminary conditions that are essential to the performance of a penal act is then added — most difficult of all to grasp and understand — the individuality of the criminal. Even such a staunch adherent of the doctrine of free will as Krohne <sup>2</sup> is obliged to admit: "Why, in one case, the will triumphantly resists these [social] causes, and, in

<sup>1</sup> *Loc. cit.* Note 84.

<sup>2</sup> Krohne, "Lehrbuch der Gefängniskunde," p. 205.



another, fails, is an incalculable problem; it is one of those mysteries before which at present we stand baffled with the confession 'Ignoramus' on our lips."

How can the judge solve an equation that is composed entirely of unknown quantities, how can he find his way in this chaos of social and psychological causes, how form his judgment? It would scarcely be possible to find a sharper condemnation of sentencing than Finger<sup>1</sup> gives, when he says: "Definite directions in regard to the passing of sentences, which is more a matter of feeling than of deliberation, cannot be given." Only Wach's<sup>2</sup> opinion is even more annihilating: "It is true that the judicial passing of sentences is largely a matter of arbitrariness, mood, and chance. This is an open secret, a painful fact of experience, to everyone who has been engaged in criminal proceedings. Whether the accused is sentenced to six or five or four weeks, or two months, imprisonment is more dependent on the judges, who happen to be sitting, on the subjective views and suggestions of the judge, on his temperament and his digestion, than on the gravity of the crime."

But this hard criticism, the correctness of which is only too obvious, and the full recognition of the fact that the problem cannot be solved, do not permit the criminal judge to refrain from sentencing. He must find reasons for, and impose, a carefully measured sentence. The adherents of the theory of retribution apparently see a remedy in the exact determination of the psychological judgment of values for every criminal act. Birkmeyer desires a "restriction of the judicial power, which extends too far in this direction"; Schmidt<sup>3</sup> asks for "standards which compel the court, which shall be

<sup>1</sup> *Finger*, "Lehrbuch des deutschen Strafrechts," p. 513.

<sup>2</sup> *Wach*, "Die Reform der Freiheitsstrafe," p. 41.

<sup>3</sup> *Loc. cit.* p. 308.

restricted, as far as possible, in the exercise of its judgment, to give between a certain fixed maximum and minimum, heavier and lighter penalties for the graver and milder forms of the same offense."

"This precise, numerical expression of the gravity of each separate offense in marks, months in prison, years in the penitentiary, is scarcely less naïve," wrote Kraepelin in his treatise on the "Abschaffung des Strafmasses," "than the more lucrative idea, which sprang from the same soil, of regulating the forgiveness of sins by issuing share certificates of different value on the stock capital of surplus good works." This curious method of compensation by providing for an act an accurately measured penalty is, moreover, to be crowned; character and education, descent and environment, resolution and remorse, former convictions and injured legal values, are to be squeezed into a schematic system, which, "with the greatest possible restriction of the judicial judgment," shall make it possible to practice just retribution. Apparently the judge will merely have to refer to something like a price list in order to see how heavy the penalty must be, taking into consideration all the factors that bear on the crime.

Whether it would then still be possible to find a judge to perform this mechanical work, I am inclined to doubt. But we need not worry about that, for no such criminal code will ever exist, because the preliminary supposition, that life can be expressed in formulæ, is wrong, absolutely wrong. How, then, can we take into account hereditary influences, education and environment, how measure the significance of natural disposition and external conditions? A law that still further restricts the judge's power is subject to the same criticism that applies to our present criminal law: "We do not know the measure that we desire to recompense. It is solely a seek-

ing and groping in infinity, — this that we take to be the searching out of the guilt for which we want to create a balance.”<sup>1</sup>

I will not delay to repeat the often cited proofs that, under the present system too, sentences differ in every court according to local, and widely varying, customs, will not point out how often higher and lower courts agree as to the act but differ as to the kind and extent of the penalty, which is hardly compatible with “just retribution.” They all, however, pay too little attention to the effect of the penalty. If an official is imprisoned even for a few days, he loses his office and reputation; to a respectable citizen who is imprisoned for some negligence or slight offense, every day is a torture; while an habitual inmate of penal institutions scarcely feels a brief interruption of his liberty to be an inconvenience.

From my own experience, I will mention only the following cases. A man who had already been sentenced 22 times for such offenses as embezzlement and fraud, theft and resisting an officer, assault and battery, ‘begging and vagrancy, was convicted of his twenty-third offense, insult, and received a sentence of 3 weeks; his next conviction was for insulting an officer, and he was sentenced to 24 days’ imprisonment. Another had served 43 sentences, generally for a number of offenses at one time; he had been sentenced 6 times for assault and battery, 18 times for insult, 20 times for resisting State authority. His forty-fourth sentence, for “resistance, insult, and assault and battery” was set at 3 months’ imprisonment. A third had spent 13 years in prisons and penitentiaries, apart from a short detention for begging: 1 conviction for receiving stolen goods, 3 for larceny, and 14 for fraud and attempted fraud. His seventeenth sentence

<sup>1</sup> *Souffert*, “Verhandlungen des 21 Deutschen Juristentages,” 1890, I, p. 250.

was again for "fraud repeated a number of times" and amounted to 4 months' imprisonment! The fourth, after having been 7 years in prison, the same length of time in the penitentiary, and  $4\frac{1}{2}$  years in the house of correction, was sentenced, for the thirty-ninth time, to 3 days for begging, for the thirty-sixth time to 6 months' imprisonment for repeated thefts.

These are, indeed, particularly striking cases, but not exceptions. If we look at a list of the former convictions of old and habitual offenders, we are surprised to find how frequent such cases are. To none of these men does a few months in prison mean a "disgraceful punishment." On the basis of our present criminal law, increasing the severity of the sentence does not greatly change the fact that the criminal is much too accustomed to imprisonment to compare the impression it makes with the intense effect produced on a man who acted in a moment of recklessness, or was the victim of an unfortunate chain of circumstances. It is precisely the best among the convicted who are utterly ruined by the punishment, the most depraved who are scarcely touched. Thus the unequalness of the effect of the penalty also, which perhaps we should first have to try in order to appreciate, forbids our considering the sentence a just compensation for the criminal act.

The theory that considers a penalty necessary only "*quia peccatum est*," is based on wrong assumptions. It may be left entirely out of the question, as being wrong in principle, — the more so, because it is also practically worthless.

The Prussian "*Zirkularverordnung*" of 1799, which, in view of the increasing number of thefts, was intended to make the penalties more practical, contains the following passage: "In making these changes in the former criminal laws, it is our intention, as the paternal head of the State, to secure to

our faithful subjects the quiet possession of their property, to set up deterrent examples to prevent stealing and robbing, to correct criminals where possible, and, if they are incorrigible, to render them innocuous to their fellow-citizens." In this sentence is clearly expressed the other conception of the purpose of punishment: to bring about greater legal security, and to do this by deterrence, on the one side, and by correction and rendering harmless, on the other.

The deterrent effect of punishment should be active in two directions. It must impress itself on the consciousness of the people at large and thus act as a preventive, and, through the punishment, it must be a warning to the individual and must thus restrain him from further evil deeds. The first effect, general prevention, belongs to those things the effect of which cannot be given in figures. If we go by statistics, we come to the conclusion that the hoped-for effect is either very slight or entirely non-existent. For years the number of first convictions has been increasing rather than diminishing, certainly and decidedly increasing among juveniles, as has already been pointed out. From this we may, indeed, conclude that the fear of punishment is not sufficient to check crime; but we must not forget that social causes, popular customs, economic distress, too early participation in the struggle for life, largely explain and make this increase comprehensible. Hence we must restrict our opinion of general prevention to this: the deterrent effect of punishment is not great enough in the face of the growing social menace.

That punishment does not deter, may also sometimes be due to its too liberal application. By degrees our whole existence has become so surrounded by a barbed-wire fence of penal and police ordinances that it is really difficult to remain entirely unpunished. We must not deceive ourselves into thinking that the fact that the numerous small penalties for

acts such as beating carpets at the wrong time, omitting to put ashes on an icy sidewalk, and other harmless offenses, are followed, with no sharp dividing line, by those offenses that the Penal Code threatens with punishment, detracts from the gravity of the penalty. And I do not think I am mistaken when my experience leads me to assert that the dread of prison and the dread of punishment have lost something of their former strength in the popular mind. In considering this fact, I attach less importance to the fact that more humane treatment, cleanliness and sufficient food, simple though it be, have destroyed some of the terrors of imprisonment; it is of far graver import that the feeling that causes people to look at crime askance should be weakened or lost. As long as hundreds of thousands of hitherto blameless individuals are annually punished, no very fine reaction of the people against criminality can take place. And the moral of this is, that we need fewer threats of punishment and greater seriousness in the prosecution of crime.

At the moment a crime is decided upon or, in the case of passionate crimes, carried out, the idea of punishment has very little effect as a counter-motive, because the criminal is either so excited or so confident of remaining undiscovered that he looks upon the penalty only as a remote contingency. Every crime committed by a previously unconvicted person is a proof of the failure of general prevention. Nevertheless, we may probably assume that, especially with weak and vacillating persons, the fear of punishment is sometimes, in the moment of temptation, determinative and prevents the crime being committed; this of course cannot appear in the statistics.

Greater, however, than the value of the threat of punishment in the individual case is its educational value for the whole view of life held by the people.

The stamping of an act as an offense the commission of which the State will prosecute with unrelenting severity, immediately arouses the feeling that the act is unsuitable, inadmissible, disreputable, contrary to duty.<sup>1</sup> A relatively harmless example may illustrate this. The possibility of being punished for dishonest competition, at first arouses the attention of economic opponents, who watch each other carefully, so as to be able, in case of misrepresentation, to act immediately. But already the reaction is becoming noticeable, and the words of an advertisement are carefully weighed, — not alone because the merchant fears the eagle eye of his envious opponents. Before long we shall be able to look upon it as a matter of course that every firm that cares anything for its reputation will avoid all extravagant advertisements, calculated to deceive the public, as being unworthy.

Thus, general prevention operates rather quietly, slowly, and penetratingly, making the consciousness of right sharper, intensifying the general feeling for right and wrong, and is thus rather educative than directly deterrent.

As regards the effect of special prevention, the figures in the statistics of relapse are uncommonly instructive. They show that it fails utterly. We have already seen that many criminals reappear before the criminal judge in the course of the same year, that the more frequent former convictions are, the surer and quicker is the relapse, and also that the severity of the punishment is without influence. If anyone should take the trouble to jot down graphically the career of an habitual criminal, he will be astonished to see how short the time always is between the end of one sentence and the commission of a new crime, especially if he bears in mind that not every offense immediately comes to the knowledge of the court.

<sup>1</sup> *Liepmann*, "Einleitung in das Strafrecht," Berlin, 1900, O. Häring, p. 291.

The reasons why punishment fails to have a deterrent effect on the individual lie in different fields. The first reason is in the execution of the sentence itself, which, looked at closely, loses much of its horror. I do not share the opinion that security from hunger and cold makes imprisonment actually inviting. Nor can the occasional remark of a criminal, that his desire for the comfortable quiet of prison life led him to commit some offense, lead me astray, even if he speaks the truth. It has been my experience that practically all criminals long for the time when they are to be set at liberty. As long as the prisoner in a penal institution is subject to the strict system of the house, and sees day after day pass, all too slowly, in hard, monotonous work, he certainly does not look on imprisonment as desirable, or even easy. But it is a well-known psychological phenomenon, that the remembrance of pain and suffering very soon fades, and that time soothes even apparently unendurable trouble. This is even truer of the impressions made by imprisonment, in which it is the long duration, the eternal sameness, the strict discipline as a whole, that weigh so heavily. But from a distance, the danger of having to go to prison again does not seem so unendurable; as a counter-motive to new crimes, the remembrance has scarcely any effect.

Let me say at once that I would not for a moment consider it advisable to keep the remembrance alive by making the penalty severer. Such a course would grind the more harmless and milder criminals even finer than does the present practice, and would be ineffective as regards habitual criminals.

The second reason for the failure of special prevention is to be found in our laws. Recidivism is regarded as a ground for increasing the penalty only in the case of a few crimes, and then only if it is the same offense that is repeated. I have had to point out again and again that all offenses of



equal psychological value, as well as the fact of a former conviction for any offense, should be taken into account in passing sentence. As a matter of fact, this is actually done in the practice of the courts. I am always glad when I hear a severe sentence imposed on the ground of frequent former convictions. But the constant taking into account of the injury done to a legal value prevents the carrying out of this principle, and produces such judgments as those mentioned on page 258. But how is a sentence of 4 months' imprisonment to make an impression on an old swindler, who is convicted of his seventeenth fraud, and how can 3 days in jail for begging affect a man who has spent nearly 19 years in penal institutions?

If punishment were to have any deterrent effect at all on such old prison habitués, the penalty would have to be one to be really feared, and that could only be hoped if it were increased for every offense. But — after all that has been said, this requires no proof — even then the effect would fail in the case of criminals whose nature is such that they cannot be influenced by a motive of this kind. The most drastic laws, fire and sword, the wheel and the gallows, have not rooted crime out of the world. Hence, where it is not possible to operate by fear, other measures must be taken.

Punishment is intended to protect society from the criminal assaults of certain individuals. In our endeavors to reach this goal we must not discard a method because it rarely proves to be effective. Even if it were only on account of its educational value, I should not like to do away with the deterrent effect produced by the threat of punishment. But it would be a mistake to construct a penal code entirely from the standpoint of deterrence.

Let him who does not approve of this formula, put Heimberger's question<sup>1</sup> to himself: Why does not the State repeal

<sup>1</sup> Heimberger, "Der Begriff der Gerechtigkeit im Strafrecht," 1903, p. 31.

its criminal laws? With Heimberger he will have to answer: "Because from a repeal of its criminal laws the State would have to fear, and rightly, the war of all men against all men, the destruction of all order, and its own end." The State must protect society by means of its laws.

Much higher is the endeavor to make the criminal harmless by making him better, by giving him the incentives that he lacks and trying to supplement his defects of education and disposition. We may as well acknowledge to ourselves at the outset that these efforts will often fail, will fail for the same reasons that the attempt at deterrence fails, because the means used to correct and improve the criminal, above all the execution of the sentence in its present form, have too many defects, because our laws fail to give us the opportunities that we need, and, finally, because many criminals, on account of their natural disposition and mentality, are incorrigible. Even from the standpoint of the theory of betterment, then, nothing can be done with these latter but to make them harmless. Defects in legislation and in the carrying out of sentences, however, can be remedied. In order to do this we need only keep them clearly in view, and I will now try to discuss "punishments" and their psychological significance in the prevention of the descent into crime, always keeping this end in view: the protection of our health, our honor, our property.

#### § 25. The Means of Punishment

The most radical means of preventing a criminal from repeating his evil deeds is to put him to death. Capital punishment has, therefore, always been used in the case of certain criminals whose particularly dangerous acts made them a special menace. Thus the crime was "atoned for," society was relieved of the necessity of supporting such a person for

years, and was safe from the danger of his attacking the officials of a penal institution or, in case he should escape, of his menacing public safety in general. It cannot be denied that, from the standpoint of security, capital punishment is justifiable; de Fleury<sup>1</sup> even desires to see it much extended in the interest of a social selection; what is repulsive to our feelings about the outward procedure could be done away with by changing the method of execution.

The grounds for and against capital punishment have so often been discussed<sup>2</sup> that it is not necessary to enumerate the objections to it, among which the possibility of a miscarriage of justice<sup>3</sup> is the most serious. For the most part, they lie in the sphere of feeling, which, in general, rejects the execution of the death sentence.

It is essential, however, that we should consider whether capital punishment acts as a deterrent; I can scarcely believe that it does. German statistics do, indeed, show that the number of those condemned to death has decreased somewhat, but only very little. Belgium, on the other hand, where no capital punishment has been carried out for years, has also had no increase of the crimes for which capital punishment is the penalty. Observations show that the effect of executions is by no means deterrent. Ferri<sup>4</sup> had the opportunity of being present at two executions in Paris. His remarks show that their effect on the suburban population of Paris was the very opposite of what was hoped for.<sup>5</sup> Instead of dull terror, he saw curiosity, pleasure in the unusual sen-

<sup>1</sup> *De Fleury*, "L'Âme du criminel," Paris, 1898, Felix Alcan, p. 134.

<sup>2</sup> *Francart*, "La peine de mort" (Mitt. der I. K. V. VII, 36).

<sup>3</sup> *Lohsing*, "Abschaffung der Todesstrafe" (Arch. Krim. Anthr. IX, 1).

<sup>4</sup> *Ferri*, "Les criminels dans l'art et la littérature," Paris, 1896, Felix Alcan, p. 75.

<sup>5</sup> A fine description of such a scene, which, as comparison with Ferri's observations shows, is entirely unexaggerated, is to be found in Zola's "Paris" (Bibliothèque Charpentier, 1898, p. 491).

sation, betting as to what the demeanor of the condemned man would be, everything, in fact, rather than the solemnity suitable to such a sad occasion. It can positively be asserted that the peculiar rôle played by a person condemned to death, the attention that his deeds, his life, his behavior at the time of the execution, arouse, thanks to the public love of sensation to which the press caters, are an actual attraction to a number of psycho-pathological individuals. The fear of lifelong imprisonment would probably have a more wholesome effect on the peculiar individualities of assassins and their ilk than does the martyr's halo of glory, the imagined fame of a sensational execution.

Whatever our opinion of capital punishment may be, its retention will have just as little material influence on criminality as its abolition.

Deportation may, undoubtedly, be regarded as a convenient method of getting rid of dangerous persons by presenting them to other countries. Theoretically, we can perfectly well imagine that the necessity of getting on in a strange country might divert the too well developed impulse from deeds of violence. But, considering the nature of criminals, I fear that the number of individuals in whom this possibility can be depended on would be quite insignificant. Suitable as deportation would be for these few energetic and vigorous persons, for most of the others it would be just as unsuitable; for them it would mean an altered and delayed sentence of death. Most of the attempts made hitherto have come to grief, largely, probably, on account of wrong selection. As to the practical success of deportation, opinions differ widely.<sup>1</sup> But the question of deportation seems to me to be well worth

<sup>1</sup> *Bruck*, "Fort mit den Zuchthäusern," 1894, and "Die Gegner der Deportation," 1901; *Mittermaier*, "Kann die Deportation im deutschen Strafsystem Aufnahme finden?" (ZStW. XIX, 85); *Heimberger*, "Zur Reform des Strafvollzugs," 1905.

further discussion, without its being necessary to make such discussion difficult by adopting a passionate tone. For the present, certainly, I personally think we should do well to make use of the strength of our prisoners at home. We still have in Germany plenty of unfruitful marshes and heaths, streams to be dammed and valleys to be closed up, and such work waits to be done in places where it is impossible to employ ordinary workmen, because it is too difficult to provide them with shelter and food, and the pay would be too small. But here the State can step in as an employer, and it is doing so more and more. Only those convicts are employed who have good prison records, and only in places where otherwise the work would not be done because laborers are not to be found, or where exceedingly high wages would prevent the work's being profitable. In the year 1901, 2300 prisoners were employed in all the provinces of Prussia, and proved themselves to be willing and able. "No difficulty was experienced in the matter of discipline, and attempts to escape were very rare." This result cannot be too strongly emphasized, for it shows that even recidivists — only such were used in this work — do not under all conditions require expensive cells, high walls, and the whole official prison apparatus, in order to behave well. Attempts to use convict labor outside of the country have proved so satisfactory that we might well demand that they should be more extensive, but as long as the use of such labor at home proves to be practicable — being both cheaper and better in every respect — we need not consider penal deportation.

The slight success of imprisonment has led Bennecke to suggest that, in the case of the incorrigible criminal, the punishments should be made so severe that he would fear them, wherefore Bennecke demands that such criminals should receive special treatment, in which corporal punishment

should be one of the chief features. The advocates of corporal punishment frequently refer to the good results obtained by it in London, where in a short time it is supposed to have put an end to attacks by so-called garroters in the streets. This proof of the efficacy of corporal punishment, unfortunately, rests upon an historical error.<sup>1</sup> In January, 1863, a high official congratulated the grand jury on having been so successfully energetic that the bands of garroters had disappeared; hence the law introducing corporal punishment, which was not proposed until July of the same year, came too late.

It is to be regretted that Denmark has recently enacted a corporal punishment law, although it applies to only a few cases. At the same time the conditional sentence was introduced and the age of legal capacity for acts was raised from 10 to 14 years, both changes being so advantageous that we can afford to overlook the revival of corporal punishment. Nevertheless, it is disheartening enough that a cultural state has reverted to such a brutal means of education and one that is of most questionable value. Altogether it is surprising to find people still enthusiastically praising flogging. Experience in the army, where it was formerly thought impossible to get on without the stick, has shown how easily corporal punishment can be dispensed with. Discipline in our navy is far better than in those of many other countries, where fear of the "cat-o'-nine-tails," or other equally edifying instruments, helps to keep the men in order. Such humiliating methods of punishment are surely not necessary.

Corporal chastisement does still exist in Prussian penitentiaries as a disciplinary punishment, but it is very rarely used. The brutalizing effect that corporal punishment must have on the man who is flogged, on the prison officials, and on the

<sup>1</sup> *Typjerg*, "Die Prügelstrafe in Dänemark" (MSchrKrimPsych. I, 415 and II, 133).

spectators, is out of all proportion to the possible good effected. Krohne<sup>1</sup> speaks most decidedly against it. "It shows an entire misunderstanding of the 'brutal nature of criminals' to believe that the prospect of intense physical pain would prevent an outbreak of their malice or passion." Whoever desires to convince himself of its failure as a means of deterrence, should read Dostoievsky's minute psychological observations made during his imprisonment in Siberia.<sup>2</sup> In any case, the introduction, or rather the revival, of corporal punishment in our penal system would involve so many disadvantages that it is a matter of indifference whether occasionally an individual criminal is found who fears it. It is certain that no one improves under it.

The loss of civil rights is just as ineffective a means of deterrence as of correction. It may even hinder a man in his efforts to rehabilitate himself in society, as, for instance, when his inability to fill the office of a guardian, or to witness a document, makes it known to those about him that he is a former convict. But such cases are becoming rarer and rarer. The loss of civil rights now generally follows only if a crime has been committed that betrays a particularly base character, and it is improbable that such persons will immediately seriously endeavor to rehabilitate themselves. It is entirely in the interest of the State to deprive them of every influence on public and private affairs. I consider it clearly advisable that this loss of rights should be extended to include the right to exercise parental authority. Above all, the right of guardianship, even in the immediate family, must be taken from one who shows by his behavior that he is unable to lead an upright life himself, much less to supervise the training and education of minors and to manage their property.

<sup>1</sup> "Lehrbuch der Gefängniskunde," p. 356.

<sup>2</sup> Dostoievsky, "Memoiren aus einem Totenhaus, Leipzig, Philipp Reclam."

Placing a man under police surveillance is of particular interest, because, in this instance, the decision, by law, rests with the prison officials; even though the right to impose police surveillance is assigned to the "higher state police authorities," yet there is no doubt that the greatest weight is laid upon the "judgment of the administrators of the prison." Here we find recognition of the principle, that the changing of an admissible secondary punishment into a definitely imposed one should be made dependent on the individuality of the criminal, which careful observation affords a better opportunity to judge than does court procedure.

Its advocates are few, and for good reasons. The habitual criminal laughs at it. He knows how to escape it as soon as he begins his underhand doings again. In the lists of punishments imposed on old habitual criminals, police surveillance is never lacking. It has probably never hindered a man from returning to crime, but often, when a man has been trying to pull himself together again, police surveillance has been the determinative factor that has drawn him back into the abyss. This experience has led to an arrangement by which, in certain cases, provident societies, instead of the police, are allowed to exercise the protective supervision. In this way the interference of the lowest organs of the police in the career of a released convict is avoided. When the chaplain of an institution, whom experience of many cases has shown "how useless, on the one hand, and harmful, on the other, the effect of police surveillance may be," feels himself constrained, in his capacity as a prison official, to oppose the exercise of such supervision in most cases,<sup>1</sup> and when it is known that this view is shared by nearly all intelligent prison officials, the wish to have §§ 38 and 39 entirely omitted from the Penal Code is probably justified; they would hardly be missed.

<sup>1</sup> Krauss, "Der Kampf gegen die Verbrechensursachen," 1905, p. 359.



Most questionable, in particular, is the right of the police authorities to expel a former convict from a city or town.<sup>1</sup>

The handing over of delinquents to the State police authorities I have already spoken of as being the recognition of the necessity of social repression, even when the offense is quite a minor one. It is surprising that this measure applies only to beggars, tramps, drunkards, prostitutes, and cadets, and not to far more dangerous persons. When these delinquents are turned over to them, the State police authorities have the right to commit the convicted persons to a workhouse for a period not exceeding two years. This benefits not only society, but also the vagabonds and prostitutes themselves, although usually they are far from being satisfied with this treatment. A very large number of physical and mental inferiors are found among them. Where the firm will of the institution officials affords them a protection from their own instability, where the work assigned them spares them the necessity of taking thought for the morrow, where the impossibility of

<sup>1</sup> The power of the police to expel criminals rests, in Prussia, on the statute of December 31, 1842, relating to the settlement of newly arrived persons. The second paragraph of this law determines, as an exception to the "Freifügigkeitsprinzip," that the stay of a Prussian citizen in a place where he has his own dwelling or is able to provide for himself can be forbidden or made difficult by irksome conditions:

"If the State police finds it *necessary* to exclude a released convict from residence in a certain place. The State police authorities, however, are only empowered to do this in the case of convicts who have been imprisoned in a penitentiary or, for a crime *which stamps the perpetrator as a person dangerous to public safety or morality, has been sentenced to some other penalty or has been imprisoned in a house of correction.*"

The question whether this regulation is still applicable or has perhaps lost its validity in consequence of the subsequent national criminal code, is one of the most disputed points of public law. The "Oberverwaltungsgericht," however, in its decision of February 24, 1883 (vol. IX, p. 415), has accepted its validity and given in detail reasons for doing so. Hence, with us, the law is still in force, that criminals who show themselves to be dangerous to public safety or morality — and what criminal is not? — are subject to expulsion by the police authorities.

obtaining spirits puts an end to their continuous drunkenness, idle vagabonds often prove to be industrious, reliable workmen, and indolent prostitutes to be skilful and willing servants. But purposeful and unremitting guidance is necessary, otherwise their energy fails them. Hence they relapse immediately into idleness as soon as they are discharged. From this it follows that the period of confinement must not be too short. In the case of those who are corrigible, release might be tried after several months of model behavior, perhaps in the form of a leave of absence, which should become permanent if the good behavior continues for a year or two. But the incorrigibles have shown themselves to be still as bad at the end of two years, the longest time for which they can be committed in Germany. The prostitutes immediately return to the brothel, the men resume their interrupted wanderings, and it is only due to chance or their skill in eluding the eye of the police if they are not re-arrested after a few days. The short time that they spend in jail before they are returned to the workhouse is quite superfluous. It only considerably increases the expense to the State, in so far as they have to be taken first to the jail and then sent from there to the workhouse, instead of being immediately committed to the latter.

This delivering of offenders to the State police is at present only a half-measure which has stopped short of the final and most important step. But — and herein lies its advantage from the standpoint of a purposeful criminal policy — it has broken with the principle of retribution, and only serves the purpose of freeing society from these parasites. It certainly cannot be denied that the sums obtained by begging amount to millions, but, after all, anyone who voluntarily taxes himself for the support of the habitual beggar can put a stop to it whenever he chooses. It is not in begging and tramping that the danger lies, but in the fear of work, in

drunkenness, in the state of being a parasite; these individuals are for the most part still in the first stages of criminal activity. And from this the State draws its right to defend itself decisively. We can but rejoice in this. The first steps will certainly be followed by others, and in other fields: probationary release in the case of the better element, supervision for years, even, under some circumstances, as Hippel<sup>1</sup> demands, until death.

Fines, in their present form, are altogether useless, above all because they are not sufficiently adapted to the financial circumstances of the persons punished. The vicarious penalty, moreover, which permits the substitution of a prison or even penitentiary sentence if the fine cannot be paid, and allows the offender to free himself from the changed sentence by paying the amount of the fine, should be entirely rejected. This turns the fine into a class penalty, as it will not, of course, occur to the well-to-do man to submit to imprisonment rather than pay a relatively small sum, while the poor man cannot do otherwise than serve his time in prison.

It would be far better, instead of imprisonment, which is only an expense to the State and, moreover, is entirely ineffective as a punishment, to make the obligation to perform certain municipal and other work the alternative. Such a possibility did, indeed, formerly exist, for the sixth section of the introductory statute of the Penal Code says expressly: "When in the national laws, instead of imprisonment or a fine, forestry or municipal work is provided or remitted, this stands." According to the general opinion, even new national laws, providing in the same way for the performance of public work instead of a fine or imprisonment, may be enacted,<sup>2</sup> if

<sup>1</sup> *von Hippel*, "Verhütung und Bestrafung von Bettel, Landstreicherei und Arbeitsscheu," 77. Jahresbericht der Rhein.-Westf. Gefängnisgesellschaft und zur Vagabundenfrage, Berlin, O. Liebmann, 1902.

<sup>2</sup> *Olshausen*, "Kommentar zum Strafgesetzbuch für das Deutsche Reich," I, p. 27.

the national legislation in question already contained such provisions. In its law relating to forestry thefts of April 15, 1878, Prussia has especially urged this forestry and municipal work. I was unable, however, to ascertain whether and to what extent this method of working off is applied, but it seems to me that a very rational idea lies at the bottom of it, the re-introduction of which into our penal system would be practicable. Such penal labor, which von Jagemann<sup>1</sup> also advocates, would probably be far more unpleasant to most of those who are sentenced to jail, would be far more likely to restrain them from new offenses and bring the gravity of their actions better home to them, than does a few days' imprisonment. At the same time the amount of work required of an offender could be better adapted to his physical strength. If he should altogether refuse to work, that would show that he is not willing to submit to the social order, and severer measures would have to be taken.

Hans Gross<sup>2</sup> has recently written in favor of the introduction of "house arrest" to take the place of fines and brief jail sentences. The objection that house arrest would interfere with a workman's occupation, Gross seeks to overcome by suggesting that such persons should be confined to their homes on their free days only. Gladly as I acknowledge the suitability of the house arrest as a penalty that would be much more felt than a fine, especially by the well-to-do, yet, as a physician, I must raise a new objection to it. A waiter or a railway employee who — I am following Gross's example — has only one free day in ten could not forego two such successive holidays without injury to his health, nor could a servant do without her free Sunday afternoons. The health of a capitalist, however, would certainly not suffer if he were

<sup>1</sup> *Blätter für Gefängniskunde*, XXIV, 17.

<sup>2</sup> *Hans Gross*, "Hausarrest als Strafmittel" (*MSchrKrimPsych.* II, 200).

obliged to stay in the house for two successive days. It is unavoidable that the effect of house arrest would be too unequal on the different classes of the population, and, for that reason, I fear it will find few advocates.

The reprimand as a punishment exists only for minors between the ages of twelve and eighteen. It does not, of course, balance the injury done, and must, therefore, be characterized as a purely corrective penalty. Is it effective as such? In certain cases I think it undoubtedly is so. The reprimand is applicable only in "particularly mild cases," and then it amounts to nothing but a serious admonition from the court to lead an upright life. But where such slight offenses are concerned, is it necessary to use the whole outward apparatus of a formal court trial? Certainly not. In fact, we must even go farther, and ask, whether children should come before the court even for more serious crimes. This question too may be answered in the negative. I shall return to the treatment of juveniles, but merely wished here to emphasize the fact that the existence of the punishment of the reprimand is justified only from the standpoint of the theory of correction.

The most important means of punishment is deprivation of liberty. Our criminal code recognizes four different kinds: 1. Simple imprisonment; its length may be from one day to six weeks. 2. Imprisonment with supervision of the occupation and mode of life of the prisoner, imprisonment in a fortress; the sentence may be for from one day up to fifteen years, or it may be for life. 3. The prison sentence, the minimum being for one day, the maximum for five years. Prison convicts may be employed at some work suited to their abilities and conditions; at their request they must be so employed. 4. Penitentiary imprisonment may be for life or temporarily; if the latter, then it may be for from one to fifteen years. Penitentiary convicts must be regularly employed.

This gradation shows that another factor is added to the deprivation of liberty, that of work, which advances from mere supervision to the possibility of employment and to the compulsion to work. In practice, the differences in the manner of work, particularly between the prison and the penitentiary, have almost completely disappeared. In general, there is the compulsion to work, and, with negligible exceptions, the convict has not even a choice of employment. Every penal institution has a limited number of occupations, often so limited that it is impossible properly to consider physical and mental individuality. Formerly the most various trades were represented in every institution. The letting of the working force to contractors then led to competition with outside labor, which is not desirable in the interest of the working class. Thus the State came more and more to admit only those trades that delivered work for other State institutions, for the army and for the railway administrations, and to carry out this work under its own management. To be sure, competition with outside workmen is not yet at an end. For everything that is made in penal institutions would otherwise be made by free workmen. But this restriction to the State's own needs affects only a few trades, and the work is not indispensable. It is doubtful, however, whether the interests of society are adequately served in this way. In many cases the work is done with the most antiquated equipment, which involves a highly unnecessary waste of force. Moreover, in a large number of penal institutions it is absolutely impossible to teach a prisoner a trade that will be useful to him later in life and will thus aid in preventing his relapse into crime.

When we examine imprisonment with and without the compulsion to work, in regard to its expected result, we must be clear in our minds from the outset that correction and deterrence here go hand in hand with the aim to protect

society. Above all, imprisonment prevents the individual who is a social menace from following his inclinations at the expense of the community. In addition, it has a powerful influence on the whole mode of thought of the prisoner. He becomes a member of a well-ordered, self-contained organism, in which everything is regulated to the minute. The carefully planned rules of the institution keep the limits of his right always before his eyes, he learns to obey, learns to submit, becomes accustomed to order and cleanliness, and, above all — he learns to work.

Germany has, fortunately, never adopted such foolish methods of compulsory work as the treadmill, the ball and chain, etc., which are still used in some other countries. This purely physical activity, in consequence of its deadening, mechanical, and entirely purposeless motion, has a thoroughly demoralizing influence on mind and body; it is entirely at variance with the purpose that working is intended to accomplish, that is, to accustom the criminal to regular and industrious activity. With us an incentive is offered him in the shape of a small reward of labor, which at the same time may help him over his first period of need on his release (compare p. 237). The daily stint of work is usually fixed with care, at an amount that the average workmen<sup>1</sup> can well accomplish with constant industry. If he does more, his reward is increased; if less, all the severity of disciplinary punishments are brought to bear upon him.

I cannot refrain from confessing here that, in the course of my activity as prison physician, I have completely lost my approval of the "stint." It seemed to me to be of exceptionally educational value to set the prisoner a definite task, in the accomplishment of which he might show his willingness

<sup>1</sup> Of course the state of a prisoner's health must be sufficiently taken into account.

and exercise his industry. But the first condition in fixing the task would naturally be proper consideration of the mental and physical capacity of the person who is to perform it. Even if that were possible, many an industrious workman is so clumsy by nature that he cannot keep step with his more skilful companions. Only the intimate knowledge of such a man, usually impossible to the overburdened prison officials, can protect him from punishment on account of failure to perform his task. The practice of requiring a definite "stint," the average amount of work to be expected, tempts the officials to judge mechanically of a man's willingness to work by his ability to work, and this is a serious defect. The judging of a prisoner's moral qualifications by the work he accomplishes is an error that an efficient prison official — and we should have only such — may not make, but which, unfortunately, is only too common.

Of still graver import is the fact that much work is done, not by the "job," but by the day. According to my experience, a prisoner must be excessively lazy before the fact is discovered, if he works by the day, so that such men are scarcely ever punished for insufficient work. This is soon observed by the workmen who work by the "stint," and the feeling that it engenders of being unfairly treated is often the cause of considerable bitterness. I am well aware that these remarks of mine, based on personal observation, on the punishment lists of different penal institutions and the reports of all kinds of prisoners, will be decidedly contradicted by most prison officials, but I have come to my present conviction slowly and much against my desire, being gradually converted by experience, and if I should fully express my opinion to-day, it would be absolutely for the abolition of work by "stints," — not of work altogether, of course, for I am a firm believer in labor, and, moreover, in industrious labor.



To many a convict prison is the place where he first experiences the pleasure due to the completion of a task, where he first seeks to acquire something by the industrious use of his hands.

The prisoner also learns to appreciate the blessing of work from another side; it helps him through the tedious monotony of uniform days. Without occupation, alone within his four walls, he soon begins to fear the phantom of tedium, of loneliness, of inward blankness. My experience has convinced me that this paralyzing stillness is much more enduring in its effect than the shades of the past. Far more rarely than one would imagine does the memory of his crimes recur to the prisoner to torment his hours of solitude. What really tortures the convict is his inability to make the slowly creeping hours fly. Sundays and holidays, the days of rest and recreation for those who are free, are thus days of inward torment to the convict, and it is with feelings of joy that he receives permission to work again. That I am not mistaken in this view is shown, apart from occasional remarks of the convicts themselves, by a very common experience. Patients whom I was temporarily obliged to forbid all work, often begged, even after a very few days, in spite of pain and fever, to be allowed to work again, saying they could no longer endure sitting still unoccupied. This is true not alone of those in solitary confinement. Ordinary prisoners too, who were not ill enough to go to the hospital, could not long endure to sit idle among the others who were working. They too asked for work.

Thus work is our most powerful educational means, beside which the regular instruction which all prisoners receive up to their twenty-ninth year, is of secondary significance. Instruction gives knowledge, but education gives the ability to a convict to reinstate himself in the regulated legal life of

the State. Therefore, the prison official should have, not the past, but the future of the criminal before his eyes. He must be familiar with the past only to this extent, that he knows the prisoner's descent and development, career and crime, so that he may judge with what kind of a man he has to deal. Certainly it is advisable to show the prisoner his reflection from time to time, that he may know who he is. But then it is necessary to remould him, to clasp the hand that he holds out pleading for help, to show him the way that he must go. The prison official who does not make the improvement of the criminal his highest aim, involuntarily places himself on a plane with the dungeon-keeper who merely carries out another's orders.

This improvement and correction cannot, apparently, be combined with the attempt to deter by intimidation; nor should it be. According to the individuality of the criminal, there is enough to deter him from further crime in his absence from his wife and children, in the loss of the saloon, of tobacco, of freedom of movement, in the compulsion to work, in the strict discipline, in the association with other criminals, in the fact of being punished itself; where none of these motives is sufficient, treating the prisoner as if, being the scum of society, he were unworthy of a friendly word, will also be ineffective. To maintain order and discipline in a well-planned, well-equipped, and well-organized penal institution is not difficult, but it is difficult to help a depraved individual on to his feet again.

Our statistics leave no room for doubt that the carrying out of our sentences is ineffective. The officials of German penal institutions themselves bear witness to this. At a meeting of the Society of German Prison Officials, in 1904, in Stuttgart, the debated question: "Does the practical experience of prison officials show the present penal system to be effective?"

was answered by, "No." Can there be a sharper criticism of the way in which our sentences are carried out than the words of the Prussian ordinance of September 19, 1895, which gives, as a reason for the introduction of the conditional sentence, the "justifiable fear of the injurious effect of imprisonment, because of the convict's association with depraved fellow-prisoners"? This criticism touches one of the sorest points of our present system, the mixing of former convicts with persons convicted for the first time, of mild, occasional offenders with old habitués of the penitentiary. The young fellow who first enters prison in fear and trembling is soon initiated into things which he should never know, every feeling of remorse is smothered by the mockery that would greet its expression; he is, as it were, at a high school of vice. Anyone who, under these conditions, is not, during a longer term of imprisonment, infected, shows that he might have been corrected without imprisonment at all. To the others Krohne's words<sup>1</sup> apply: "A sentence served in common confinement means that a criminal is punished for his offense by being further instructed in crime at the State's expense."

The association of the older habitual criminals with the beginners in crime can be prevented by isolating the prisoners. The so-called "Pennsylvanian system" has carried this principle to an extreme; every single prisoner is kept alone during the whole period of his imprisonment. The expense of building the necessary cells is sufficient by itself to bring about a restriction of this method; the requirement of silence, existing oftener on paper, it is true, than in practice, separate dormitories with common work-rooms, and many other expedients, have been tried. The ideal form of imprisonment still remains, however, solitary confinement.

Many erroneous ideas exist in regard to the latter. It is

<sup>1</sup> "Lehrbuch der Gefängniskunde," p. 246.

quite exceptional now for the principle of isolation to be so carried out that the prisoner is concealed from his companions by a mask, or that he takes his exercise in a little yard all by himself. The loneliness of the prisoner in his cell is interrupted by the keeper, the foreman, by recess, school, and church. It should be most significantly interrupted by the visits of the higher officials, who, according to the regulations, are obliged to visit every prisoner once a month. These visits are intended to afford the opportunity of studying the criminal, becoming more intimate with him, discovering his good sides, so that he may receive psychic treatment, calculated really to correct and improve him. It is to be regretted that, in reality, the visits bear quite another character. No one will imagine that it is possible to become intimately acquainted with a prisoner in fifteen minutes' intercourse a month. And yet, with only 400 individuals, such fleeting visits would occupy from three to four hours a day. No official has so much time at his disposal.

Solitary confinement is not suitable for every prisoner; some of them cannot stand the loneliness, although, as I have already explained, I do not believe that solitary confinement can produce psychoses. But, apart from these cases, solitary confinement is subjectively and objectively a blessing to the unspoiled and to those who are not entirely ruined. I do not share the common fear of masturbation. It is not prevented by common confinement, but rather supplemented by pederastic habits, and I do not consider the injury that it does to be very great. On the other hand, the cell has the advantage that the prisoner can be treated individually, and the personal influence of the officials in particular can be better exercised in private conversation.

The numberless criminals with numerous former convictions, of course, do not require isolation. They cannot be more

corrupt than they are, and they are no longer corrigible. Common work-rooms, then, suffice for them, but separate sleeping-rooms are necessary in the interest of morality.

A particularly happy idea underlies what is called the "Irish penal system." I will not consider its defects, because it is the main idea that seems to me to be most important. The sentence is served in different grades, the lot of the prisoner being made easier from grade to grade, and this in direct connection with his behavior. The better he behaves, the easier does his punishment become, and the reward for his endeavors is in the form of a leave of absence before his sentence expires. The educational element lies precisely in the prize that he can win by work and industry, obedience and understanding, and it certainly prevents frequent offenses against the discipline of the institution, better than the punishments provided for them.

In many institutions I think there is too much discipline and too little training. Reference to America is not very popular, I know, but the remark of such an objective observer as Aschrott,<sup>1</sup> that prisoners there are encouraged to behave well by being granted privileges, rather than by being intimidated by the fear of disciplinary punishments, deserves careful attention. Judging by my experience, a remitted disciplinary punishment is more effective than one that is carried out, a warning is better than a threat, instruction than the application of disciplinary punishments, and a number of our best superintendents of penal institutions agree with me. With exaggerated severity and discipline it is, indeed, possible to attain the absolute quiet of a cemetery, but, underneath, the fire goes on smouldering, and the breath of freedom suffices to fan the sparks into a new flame, more dangerous in its growth than the one that formerly threatened society.

<sup>1</sup> *Aschrott*, "Strafen und Gefängniswesen Nordamerikas," p. 12.

When we consider the defects of imprisonment, we are struck, first of all, with the fact that it is simply a mechanical carrying out of the sentence. The criminal laws lay absolutely no weight on what the penalty is to accomplish for the convict. The officials who execute the sentence are deprived of all pleasure in their occupation, and they have reason to be glad if they merely succeed in preventing injury being done. This must be changed, and it can be changed without a sentimental coddling of the criminal taking the place of strictness. The gravity of the execution of the sentence cannot be combined with this mechanical absolution of it, the prisoner must be made to see that he himself, by his own improvement, can contribute to making good the wrong he has done; if he cannot do this, he must suffer, so that others need not suffer. Imprisonment will not guarantee legal security until it actually deters and corrects the criminal, and, where that is impossible, cuts him off from society.

§ 26. Indemnification, Suspended Sentence, and  
Probational Release

Short terms of imprisonment have gradually become a great menace to public legal security. Just as a medicine loses its effect if steadily used, so, too, the abuse of the penalty of a few days' imprisonment is without good results, dulls respect for the laws, and undermines the feeling that punishment is something exceptional, something that should be remote from the life of every respectable citizen. The dread of punishment vanishes. Moreover, such a few days or weeks in prison is of no use as a corrective measure. At least, the officials to whom is left the carrying out of the sentence must refrain, busy as they are, from attempting to arouse a feeling for the right. Nevertheless, short sentences cannot be dispensed with, even when we consider the punishment solely

in its relation to the individuality of the offender. It is impossible to proceed with the heavy artillery of month-long imprisonment in the case of comparatively harmless offenses. Two ways out of the dilemma offer themselves: indemnification and the suspended sentence.

Current legal views all look upon it as a grave defect that the State, in imposing a penalty, leaves the injured person entirely out of consideration, and does not, with the sentence, impose also the obligation to indemnify the injured subject. I know well that that is what the civil courts are for, but this separation has great disadvantages. If, to-day, a laborer is so severely injured by a ruffian that he is unable to work for weeks, he can bring an action for damages. And they will certainly be awarded him, but the award will merely exist on paper; the other's lack of property will prevent indemnification; in fact, if the injured man sues after the conviction, he has to bear the costs himself. This is more than unjust. Ferri<sup>1</sup> describes this process, which he calls a "grotesque comedy," sharply and strikingly in these words: "The State, which is responsible for not having been able to prevent crime, and to give a better guarantee to the citizens, arrests the criminal (if it can arrest him — and 70% of discovered crimes go unpunished). Then, with the accused person before it, the State, 'which ought to concern itself with the lofty interests of justice,' does not concern itself with the victims of the crime, leaving the indemnification to their prosaic 'private interest' and to a separate invocation of justice. And then the State, in the name of eternal justice, exacts from the criminal, in the shape of a fine payable into the public treasury, a compensation for its own defense — which it does not secure, even when the crime is only a trespass upon private property!" Carefully considered, the person injured

<sup>1</sup> Ferri, "Criminal Sociology," p. 223.

or robbed has even to pay for the maintenance of his assailant, for the cost of the administration of justice is borne by the peaceful citizen, not by the penurious law-breaker.

In my opinion, it would increase respect for the laws considerably if the State would acknowledge its obligation to provide for the restoration of the legal state, not only as regards criminal, but also as regards civil law. The criminal should be obliged to make good the injury by the work of his hands, and to this the State should compel him. This will not be universally feasible, but it would be perfectly possible precisely in the case of slight offenses. This penalty would better conform both to the purpose of deterrence and of correction than does the short term in jail. Such a sentence means, at present, nothing but a couple of days of idleness — work for such a short time is not worth while — in a warm room, with simple but sufficient food. The representative of the theory of retribution, too, might agree with our demand, which makes compensation for the damage done more possible than does the reckoning of a bodily injury, or of a ruined object of value, in terms of days in prison.

The habitual criminal would certainly fear such a punishment more than a few days in jail, and the obligation to indemnify will impress more deeply upon him that he must respect the property and the person, the honor and the peace, of his fellow-man. In the case of the occasional criminal, the procedure would be still simpler. His punishment might confidently be postponed and the obligation imposed to indemnify within a suitable time. The necessity of saving for others will long be a warning to him that will keep him from relapse, better than would a few days' imprisonment, which, if he happens to have a careless nature, he will soon forget.

The reasonableness of this idea cannot be disputed, but it is a question whether it could be carried out; yet it should be



possible to find some way that would admit of the combination of these two branches of the law. Perhaps it might also make the "suspended sentence" appear more endurable to some of the theorists who cling steadfastly to expiation. The suspended sentence emanates from the idea that it is not always a sign of a criminal mind if a man falls into the hands of the criminal judge. Negligence, intoxication, irritability, necessity, even recklessness and temptation, may lead to crime, without our being justified in casting stones at the offender. If his act is such that money can be regarded as compensation, he will perhaps try of his own accord to make the damage good. Otherwise he will become subject to legal punishment, although, perhaps, even the judge — I again call to mind Feuerbach's words on page 252 — is convinced that a warning would be sufficient. But why should the prisons be filled unnecessarily, why should the man who is sufficiently punished for his act by remorse and the obligation, imposed either by himself or by the State, to pay damages, be still further punished? The interest of the community at large is better served by a suspension of the punishment.

The forms in which we find it in literature and in practice are very different. In England the suspension of the punishment, where there is a reasonable prospect of good behavior, has gradually become more general. It was used long before its codification by the "Probation of First Offenders Act"<sup>1</sup> in 1887. The act provides: "In every case in which a person is found guilty of theft, fraud, or any other crime that is punishable by imprisonment for not more than two years, and in which no former conviction is proved against this person, the court before which he or she is found guilty may, in consideration of the youth, character, and former life of the

<sup>1</sup> *Mumm*, "Die Gefängnisstrafe und die bedingte Verurteilung im modernen Strafrecht," Hamburg, 1896, J. F. Richter, p. 27.

offender, and in consideration of the insignificant nature of the deed, and by reason of any extenuating circumstances under which the act was committed, order, at its discretion, that he or she be dismissed on his or her recognizance, with or without surety, to appear on summons, to hear the judgment, at any time that the court may determine, and in the mean time to keep the peace and maintain a good demeanor." <sup>1</sup>

In reality, England does not limit itself to those cases in which the conditions are fulfilled, but makes the widest possible use of the suspended sentence. In the years 1894 to 1896, of the 27,323 persons who were tried by jury, which in England tries about half of the cases of recidivists, 2109 were released on their recognizances, with or without sureties. This proof of the freedom of the English judge, who is not so closely bound by laws as is the German, shows at the same time that the measure is obviously held in high estimation in England. The results are good. Of the 18,492 persons who were conditionally sentenced during the years 1888-1896, only 1564, that is 8.4%, failed to stand the test of probation.

While, in England, only the guilt is established, and no actual sentence <sup>2</sup> passed, the probation system as it existed in Boston as long ago as in 1869-1870 merely postpones the execution of the sentence imposed. In Belgium, at the end of the probation period the sentence is regarded as never having been passed, whereas, generally, it is only the execution of the penalty that is remitted, the judgment and penalty remaining standing.

All these modifications of the suspended sentence are outgrowths of the same principle: the postponement of the execu-

<sup>1</sup> *Kaarlo Ignatius*, "Die bedingte Verurteilung in England" (ZStW. XXI, 746).

<sup>2</sup> *Ignatius*, "Die juristische Natur der bedingten Verurteilung" (ZStW. XXIII, 250).

tion of the sentence in the hope that the delinquent will not offend again in the future. It is assumed that for weak natures a threatening punishment is a more effective warning from a relapse, the prospect of a reward in the shape of the remission of the penalty a stronger motive for good behavior, than an absolved penalty.

The psychological correctness of this supposition cannot be doubted. The convicted person knows that it depends on his behavior whether he is to be a criminal who has already served a sentence or a respectable man with a clear record; he knows that he can make good the recklessness of a moment by a blameless life, that if he fails in his good behavior, the sentence will still have to be served.

A stronger motive for upright living than the reward of a remitted sentence cannot be easily imagined; if the man on probation succeeds in rehabilitating himself, the consciousness that he has not been given up, that he has been able by his own efforts to live down his offense, will bring with it the conviction that he is able to overcome temptations; he has won back his self-confidence, and, instead of a depraved criminal, the State has gained a useful citizen.

After long hesitation, Germany has also introduced a modified form of the remission of penalties, conditional pardon. Since January 1, 1903, the "Bundesrat" has been agreed on the principle of this measure, so that at least partial uniformity throughout Germany in administering it may be brought about.<sup>1</sup> Conditional pardon is to be applied mainly, though not exclusively, to juveniles who have not already been convicted. The severity of the penalty is not to be determinative for the applicability of conditional pardon. Of the greatest significance is the progress evidenced in the

<sup>1</sup> Klee, "Die bedingte Begnadigung in den deutschen Bundesstaaten" (ZStW. XXIV, 69).

fact that the court that imposes the sentence is to have a voice in the decision. Hitherto the decision has lain entirely with the authorities that see to the carrying out of the sentence. I purposely emphasize the word "decision," for we can scarcely speak in seriousness of the Crown's exercising the right to pardon.<sup>1</sup> The report of the office of the public prosecutor largely determines the decision. But I cannot see why the office of the public prosecutor should be better fitted to judge than the court that passes the sentence. The present practice I consider to be indicative of a transitional state, leading to the suspended sentence. If a court is trusted to determine the just punishment for a crime, taking fully into consideration the individuality of the offender, it should also be considered capable of determining in what cases a postponement of the punishment may be granted in the hope of being able to remit the sentence altogether. It is my conviction that the conditional sentence should be regulated by the national laws and that we are fully justified in demanding this.

According to the decision of the "Bundesrat," the period of probation is to be shorter than the term required for the lapsing of the penalty in conformity with the statute of limitations. In general, it will be one year at least, in the case of penalties that lapse after two years, and, in the case of those that lapse after more than two years, the minimum probation will be for two years. These periods are very short; at present, good behavior for a year is sufficient to spare the convicted person the execution of the sentence. But the individual who recidivates after only a year has passed, thus shows himself to be so dangerous to public safety that a remission of the punishment in his case would be out of place. Why should not

<sup>1</sup> *Graf zu Dohna*, "Zur Statistik der bedingten Begnadigung" (MSchr. KrimPsych. I, 52).

abundant use be made of such a valuable method of correcting and training a person, and his inner self-discipline be promoted as long as possible? In the case of mild offenses, I believe that the punishment should be postponed for at least two years, and where graver crimes are concerned, that the sword of Damocles should hang above the offender's head for not less than three years, a constant warning against failure and a constant incentive to good behavior.

The less the crime indicates evil qualities in the offender's character, the more certainly can we reckon on success. Those who will fail will thus show more clearly than under the present procedure that the usual motives which should prevent crime are insufficient; other methods will have to be tried with them. Lengthening the period of probation will decrease the number of those who have been able to stand the test as long as the probational period was short, but the result will then be more valuable in aiding us to progress in the direction of avoiding a punishment wherever something better can be used.

Is conditional pardon really something better, then? This must still be regarded as an open question, at least if we consider statistics. The relation of the favorably concluded, to the unfavorably concluded, cases, in the course of the last five years, has averaged 4:1. As the number of recidivists during three and a half years, the time used as a period of comparison by the statistical department, amounts only to 13%, the result of the conditional pardon appears at the first glance to be quite unfavorable. And yet that is scarcely the case. Conditional pardon does not apply to offenses that can be met by a reprimand or a fine; this cuts out a number of comparatively harmless offenders, who are unlikely to recidivate. Moreover, the statistics of recidivists apply to both juveniles and adults, those of conditional pardon only to

juveniles.<sup>1</sup> And, finally, the nature of the offenses seems to me to be decisive. The tendency to recidivate we find to be most frequent in the case of theft, which is the crime of 29.1% of all recidivists.<sup>2</sup> And theft is also the chief crime of juveniles, who far surpass adults in it.

I am far from concluding that conditional pardon has already proved to be a success with us in Germany. Further and more detailed statistics are required before that can be decided. In any case, I believe it necessary, in many cases, to supplement conditional pardon with special state education or protective supervision, which must certainly be seriously considered for most of these juveniles.<sup>3</sup> For instability, of which crime is an eloquent proof, is certainly not corrected by conditional pardon alone. This might sooner be the case with adults, who have a better understanding of the seriousness of the situation than have immature juveniles.

Parole or conditional liberation is based on the same psychological pre-suppositions as the conditional or suspended sentence. Section 23 of the Penal Code reads: "Persons condemned to a longer penitentiary, or prison, penalty may, when they have served three-quarters, which must not be less than one year, of their sentence, if they have behaved well during this time, be released on parole with their consent." The "Bundesrat" demanded that there should also be proofs of improvement, but the "Reichstag" struck out this condition. Nevertheless, by way of ordinance, improvement has been made a condition of release on parole, in Prussia at least. The prison director may recommend such release only "if he is convinced that the pris-

<sup>1</sup> *Graf zu Dohna*, "Zur Statistik der bedingten Begnadigung" (MSchr. KrimPsych. II, 252).

<sup>2</sup> *Kriminalstatistik für das Jahr 1901*, II, p. 24.

<sup>3</sup> *Franz von Liszt*, "Der Misserfolg der bedingten Begnadigung" (ZStW. XXV, 237).

oner has improved and will not abuse the opportunity offered him to begin a new, honest, and law-abiding life." I am the last person to disapprove of this condition, which alone would conform to the protection of society that I demand, but it seems to me that in Prussia judgments are formed from entirely different points of view from those current in most of the other federated States. In the years between 1894-1895 and 1903-1904 conditional release was recommended only in the case of 1796 of the Prussian convicts subject to the Ministry of the Interior. The recommendation of the administrations of the penitentiaries was acted on by the supervisory board of justice in only 656 cases; that is, 0.86% of the total number of 75,756 convicts! The fact that their recommendations are so seldom complied with, makes the prison directors slow to advise the release on parole of a prisoner, as I know from my own experience, and in many cases where there is good reason to believe that a man might safely be released on parole, no such recommendation is made, because it is fairly sure to meet with refusal. It is not difficult to prove how wrong this method of applying such a promising measure is. In Württemberg, in the course of 23 years, of the 11,845 prisoners in Ludwigsburg, not less than 1287 (= 10.9%) were released on parole.<sup>1</sup> The privilege had to be recalled in only 2.4% of the cases! This success must be regarded as especially remarkable, for Krauss<sup>2</sup> has rightly drawn attention to the difficulty clumsy police supervision puts in the way of the rehabilitation of the released convict.<sup>3</sup>

<sup>1</sup> *Schwandner*, "Aus der Praxis der vorläufigen Entlassung" (MSchrKrim. Psych. I, 364).

<sup>2</sup> *Krauss*, "Der Kampf gegen die Verbrechensursachen." 1905, p. 422.

<sup>3</sup> Only recently an instruction of the Prussian Minister of the Interior, of May 11, 1904, sharply impressed upon the police authorities that they should exercise supervision over paroled convicts in such a way that their "progress should not be interfered with nor they themselves exposed to public contempt."

The low number of those who failed shows that prison directors well know how to make a proper selection. The decision as regards the petition is in the hands of the Ministries of Justice, to which prisoners in Bavaria and Württemberg must apply if their requests to be released on parole are refused.

That conditional release has an educational value that extends far beyond the period of probation, is shown by experiences in Southern Germany. Investigations of the later life of those conditionally released proved that only 11.4% in Bavaria, 16.1% in Württemberg, were convicted at any subsequent time. Schwandner's <sup>1</sup> figures appear to be high, when we consider that, within the first five years from the time of the first convictions, only 15.6% had to be sentenced again, according to the German criminal statistics. But this refers to all those convicted, even of harmless offenses, while Schwandner's figures include only recidivists over thirty years of age who had been deprived of their civil rights, thus only a group of dangerous criminals.

It is very regrettable that within the same country a national law should be so variously treated in the way it is applied, as is the case with conditional release in Prussia and in the other States in the federation.<sup>2</sup> And yet there can scarcely be any doubt as to what is the best method. I consider also the saving in the cost of maintaining prisoners a great advantage. In Württemberg, Sichart <sup>3</sup> found that in thirteen years 108,016 marks had been saved in consequence of 782 paroles, of which only 1% resulted in failure. This material advantage,

<sup>1</sup> *Loc. cit.* p. 365.

<sup>2</sup> In addition to this abundant use of release on parole, sentences are frequently shortened by pardon in Württemberg. This was the case, from 1896 to 1902, with 1.48% of the penitentiary, 5.87% of the prison, convicts!

<sup>3</sup> *von Sichart*, "Die Freiheitsstrafe im Anklagezustand und ihre Verteidigung," 1904, p. 40.



which is of great importance in view of the tremendous cost of carrying out sentences, would not be worth mentioning if other objections to the parole weighed against it. But this is not the case.

I have already spoken of what an incentive to the convict it is, to have the prospect of being able to shorten his sentence if he succeeds in gaining the confidence of his supervisors. He can do so only by industry and obedience. It speaks well for the thorough and careful supervision and judgment of the prison officials in Southern Germany, that, in spite of the abundant use of § 23, they have had so few failures. This puts an end to the frequently expressed opinion that by hypocrisy and cant it is easy for a prisoner to deceive the officials. A man whose psychological knowledge merely suffices to maintain strict discipline cannot, of course, be a good judge of improvement. Experience teaches us that it is just the worst elements in the institution, the regular customers, who often behave best, and know most surely how to steer clear of the dangerous points in the regulations of the institution, which threaten in all directions. The fact that conditional release can be granted only to prisoners who have served at least a year, prevents the man who has any knowledge of men — and every prison official should be such a one — from being deceived. If it is his duty to consider in every case the possibility of granting conditional release, it will certainly increase the care with which he observes every prisoner. And the latter once more feels himself to be master of his fate; confronted by a task at which he failed when he committed his crime, he knows the prize which he may win. How different must be his feelings then from those when he is conscious, even during his worst behavior and when he resists all attempts to help him on to a better path, that the day of his release will be the day of his relapse, and

that, though all the officials must be aware of this, the gates of the prison will open to him on the day fixed.

No blind confidence is reposed in the conditionally released prisoner. His personal liberty is subject to a number of serious restrictions, he knows himself to be under constant supervision, and whenever thoughts of a new crime come into his mind, the certainty of his recall immediately recurs to him as a warning. Here, too, I think we fail to take advantage of a valuable means of combat, when we make the possibility of recall extend only over the duration of the rest of the sentence, except when the latter is very long in any case. The situation is, after all, this: that a released convict who has behaved well for two years, for instance, will be very careful not to fail in the third year, because he would then have to serve the whole remainder of the sentence; he will beware of risking the whole tedious work of two years by a single reckless act. The longer, then, we extend this right of recall, the easier will it be, by means of this hard test, to separate the actually improved offender from the socially dangerous one. The shortest time that should be required seems to me to be three years in the case of first convictions, five years where there have been several former convictions.

#### § 27. The Abolition of Fixed Terms of Punishment

If a surgeon should have a patient sent him by another doctor with the request to amputate the patient's leg at a certain place because of a dangerous tumor, the surgeon would ignore the most elementary rules of medicine if he should accede to the other's request without first convincing himself of the necessity of the operation. The same course is required of a prison official who is entrusted with the carrying out of a prisoner's sentence, day in and day out. The court turns over to him a prisoner with the definite instructions to keep him

for so and so many years. Even if the most careful observation of the individuality of the prisoner convinces the official that the judge has erred in the length of the penalty imposed, he has no right to interfere; there is no way — except pardon or conditional liberation — in which the sentence can be shortened by even a day, and, of course, no way in which it can be lengthened.

An official who is interested in those committed to his care must soon lose this interest. Knowledge of circumstances influencing the deed, careful observation, long and intimate conversations, have shown him that it is only a chain of unfortunate external circumstances that has made a certain man a criminal. He is convinced that the moral attitude of the unfortunate person is good, and that it is unnecessary torture to keep him longer in prison, that it may perhaps even mean injury to his body and mind. But he can do nothing to help him, he cannot give the man who is once trapped his liberty a day before the time set, he cannot return him to the family he supports, cannot save the State the cost of carrying out a sentence that has become unnecessary.

Still more painful for the thinking official must be the consciousness that he must set at liberty a man who does not deserve it. If, occasionally, a lunatic who has been released from an asylum as harmless turns out not to have been cured, and commits a murder or a sexual crime, the press rises in a mighty protest against the inefficiency of alienists. In many cases it is really hardly possible to judge whether an insane person may become dangerous, whereas it can be prophesied only too surely that certain discharged convicts are a menace to public safety.

Most of the Prussian prisoners mentioned on page 202, of whom the officials believe that they could not reinstate themselves in law-abiding social life, have probably been set

at liberty since the time of this decision. In spite of the firm conviction that it is only a question of time till the discharged criminal breaks into a house again, attacks his fellow-men with a knife, or assaults our wives and children, the director must open the door of the prison for him punctually to the minute. A dangerous dog must be kept chained; woe to the owner who omits to see that this is done! But a far more dangerous man is "set on mankind" with the State's permission.

Before me lies the record of a man of forty who is at present serving his eighth sentence, all of the sentences being imposed for sexual assaults on children under fourteen. His first sentence of six months was in the year 1886, his last was in June, 1901. Thus in fifteen years the same man has been sentenced eight times for the same crime, the time he has spent in prison amounting in all to nine years; often one offense is separated from the next only by the time that his detention in a penal institution made the commission of another crime impossible. He will soon be discharged again. What child will be the next victim of his dangerous instincts? <sup>1</sup> Another, a boy of sixteen, was sentenced, in 1897, on account of his youth, to only six months' imprisonment for attempted rape. A year later he was sentenced for a repetition of the same crime to a year's imprisonment. Then follows a sentence of three months for damage to property, and, shortly after, a sentence of two years' imprisonment for attempted rape and indecent handling. Thus, within a period of less than five years, this fellow of barely twenty-one has served three years and nine months in prison; in his case, too, there can scarcely

<sup>1</sup> I have purposely left the words of the first edition as they stood. On the 7th of December, 1902, the convict was released. Four weeks later he assaulted a thirteen-year-old girl! (*Ziemke*, "Der Schutz der Gesellschaft vor den vermindert Zurechnungsfähigen" (MSchrKrimPsych. I, 424).)

be any doubt that he will shortly again appear before the court after having once more attacked the sexual honor of a child or a woman. Another man was sentenced in 1895 to nine months for attempted rape, in 1898 to three months for assault and battery, and in 1898 again to two years and seven months in the penitentiary in accordance with § 176 ¶ 3. On January 24, 1901, he was discharged; on June 2 of the same year he assaulted a child of twelve, and was sentenced for attempting the crime of § 176 ¶ 3 and for insult to — four months' imprisonment!

Every child, every woman, who falls a victim to such a man is a crying accusation against the State that, in order to maintain the phantom of "just retribution" in respect to the law-breaker, exposes the most precious possession of our women, their sexual honor. I have purposely chosen examples from among sexual criminals, although the same phenomenon of immediate relapse is found equally among thieves and criminals of violence. I should like to see the adherent of the theory of expiation to whom, if his own wife or his own child were brought home to him ravished, the idea would not occur, that it would be better permanently to confine a man whose constantly repeated attempts at rape prove his incorrigibility. Must we try the untenableness of our present criminal procedure on our own bodies before we can realize it? Are we struck blind to what is daily before our eyes? There must be an end made of conditions that guarantee the criminal his return to freedom where he will find the opportunity once more to gain a few years more punishment, but which leave the peaceful citizen without protection!

The official Prussian statistics conclude their remarks on the probability of relapse with the words: "According to this, all those inmates of our penal institutions who have served three sentences, one of which was of at least six months'

duration, must be regarded as lost; at least it cannot be hoped that their sojourn in the institution will again make them useful members of society. Having established this fact, the statistician must pause; the rest lies with the criminologist and the legislator."

But how can the criminologist and the legislator proceed so as to do justice to both problems at once: to protect society from these dangerous criminals, and to treat these persons in such a way that the number of those who become socially fit is increased?

To adapt the penalty to the individuality of the offender, and to carry this through to the final consequences; that is our problem. And the abolition of the fixed term of punishment is its solution.

The fixed term of punishment becomes unnecessary as soon as deterrence, correction, and protection form the basis of our criminal law. "We shall keep this tabular calculation of the penalty that is invoked by a crime, an offense, a misdemeanor, as long as the old idea of revenge, rooted in the barbaric childhood of the human race, continues to dominate our views of criminal justice. Just so long will the judge, uninfluenced by the 'warm-hearted humanity' of a grand and unified 'Weltanschauung,' continue to enter, opposite the credit side of criminal action, his debits in fines, disgrace, corporal punishment, and imprisonment, that proper account may be kept of the just order of this world; just so long will the unfortunate individual who, on the impulse of the moment, has yielded to the pressure of poverty and misery, collapse under the burden of the sentence that deprives him, once for all, of the best years of his life, to turn him out again a broken, joyless, and friendless man into the struggle for existence; just so long, finally, will the habitual criminal gleefully count the days till the prison doors must open to let him out, only

to receive him again after his brief but eventful enjoyment of his freedom. *Summum jus summa injuria!*"<sup>1</sup>

The idea of making a prisoner's punishment depend on his behavior suggests itself so readily that we cannot be surprised at finding, already in the eighteenth century, an advocate of the "indeterminate sentence."<sup>2</sup> At that time the question, what was to be done with the more harmless criminals, was forced into the background by the problem of dealing with the incorrigibles. The fruit of Klein's endeavors was § 5 of the criminal law section of the "Allgemeines Landrecht": "Thieves and other criminals who may become dangerous to the community because of their corrupt tendencies, even after they have served their sentences, shall not be released until they have proved that they are able to support themselves honestly." Also, in the order of the Prussian Cabinet of February 1, 1799, the same idea recurs: "I have noticed that very many criminals, and, among them, even some of those who have been set free by my pardon, have immediately again committed some crime. For the most part this may be due to the complete depravity of the criminal, and then no other means remains of protecting property from thieves and robbers than to imprison the latter for life."<sup>3</sup>

But just as this order recommends correction as a means of preventing immediate relapse, just as it desires, that is, everything to be tried "before the law can, with justice, ordain this (life-long imprisonment)," so, too, did Klein and the juristic faculty in Halle that supported him. It says in a judgment of the year 1797:<sup>4</sup> "In order to provide the prisoner with motives for his improvement, his life-long im-

<sup>1</sup> *Kraepelin*, "Die Abschaffung des Strafmasses," p. 17.

<sup>2</sup> *von Lint*, "E. F. Klein und die unbestimmte Verurteilung" (*Strafrechtliche Aufsätze und Vorträge*, II, 148).

<sup>3</sup> *Rosenfeld*, "Zweihundert Jahre Fürsorge," Berlin, 1905, p. 30.

<sup>4</sup> *von Lint*, *loc. cit.* p. 150.

prisonment shall be made dependent in its quantity on his future behavior."

The treasure that a few people thus tried to dig up still lies buried to-day under a mass of regulations which take everything into account except the psychological character of the criminal. And yet how different, how much firmer, harmonious, and — better — the administration of justice would be under the influence of a criminal law that would not blindly strike down the occasional criminal and be weak with the incorrigible. The effect of the indeterminate sentence would be very different on both. The person who is convicted for the first time, if the conditional sentence is not applicable in his case, will enter prison with the honest desire for betterment. Remorse and his own conscience have shaken him to the depths; he has made the best resolutions. And now he knows that he must win back his freedom himself, that he must prove, under the new conditions under which he is forced to live, that he is inwardly strong. He fights hard to win his release, and he does win it; still for several years the possibility of his recall hangs over him as a sign of what he has overcome, as a warning for the future. And if he is not unfaithful to his good resolutions, the State has one respectable member more.

The careless, happy-go-lucky individual, too, who now serves his few months in comparative indifference, would have the majesty of the law brought home to him in quite another way. With the better psychological training of the prison officials, it must be possible to recognize the superficiality of pretended remorse; the careless fellow too probably resolves on improvement, but he does not really improve. With the indeterminate sentence, the few months that he would have to serve under the present law pass, and still no move is made to release him. In slow monotony day follows day, constantly



urging him to introspection, bringing home to him the fact that only a change in himself can set him at liberty. The earnestness of life breaks the wings of airy carelessness. When he then finally arrives at discretion, and the gates of the prison close behind him, firmer resolutions to behave well will accompany him. The recall threatens him, too, and he knows that it is no empty threat; he has learnt the full meaning of punishment and fears it. In his case we shall perhaps accomplish no more than this, no real betterment, but even this guarantees public peace better than is done at present.

And finally, the incorrigible criminal, is he to spend his life entirely without hope, behind prison walls? If the protection of society is not possible in any other way, then, certainly. After all, our present legal order too imprisons men for life, some of whom, as their behavior when pardoned shows, are quite harmless. No one hesitates to demand that a dangerous lunatic should be confined for life. Why not the criminal also? I know a convict, who has lately gone insane, who served seven years at one time, eight years at another, in the penitentiary for rape, with only a short interval between the two sentences. Set at liberty, within a few weeks, he assaulted two women on successive days, and was again sentenced to fifteen years in the penitentiary for rape. The only difference between permanent imprisonment and the present practice is, that now the State gives such a man just so much time as he needs to earn his punishment again, that the State now requires the health and honor of several blameless young girls to be sacrificed before it feels justified in taking what is the most natural course in the world.

I even dare to utter a hope that apparently contradicts the belief I have expressed in the incorrigibility of many criminals. I believe that such a penal system would perhaps save many a man who is now sure to be ruined. As I have

already emphasized a number of times, I do not believe that incorrigibility is the result of innate criminal tendencies, but of the inability, due in many cases to defects of mind and education, to live under the present social conditions without trespassing on the legal spheres of others. Why, then, should not unremitting care succeed in kindling a spark of decency in the man who is given up as lost, and why should it be impossible to educate him slowly and painstakingly, after all? At present this is most difficult, because the criminal knows when his punishment will come to an end; but when once his release depends upon himself, the consciousness of this fact will perhaps awaken in him the desire to improve, which it will then be possible to cultivate and train by purposeful care and years of discipline. But if all efforts to transform him fail, there is no alternative, absolutely none, to isolation from society.

But who is to decide when the moment has come for release or permanent confinement? "The practical carrying out of the separation of offenders into occasional, habitual, and incorrigible criminals," contended Frank,<sup>1</sup> "is opposed by the fact, that the decision cannot rest with the judge, but must be left to the prison officials. Such a consequence, however, — in other words, the admission of the indeterminate judgment — will not be acceptable for the next few centuries, because at present we lack the possibility of looking into a man's heart, and because the officials entrusted with the execution of sentences have not the confidence of the people, which is an indispensable condition of any interference with human liberty."

Both objections are justified, but — only under the rule of the present criminal law. Under a future system the judge would not be only a connecting link between the

<sup>1</sup> (Mitt. der I. K. V. VI, 577.) I think I am not wrong in assuming that Frank no longer so positively rejects this idea.

examining magistrate and the prison official, would not merely establish the question of guilt. In contrast to his present activity, he would, in fact, have most difficult duties. By deeper consideration of the external causes of a crime and finer psychological analysis of the criminal's individuality, he would have to decide in what cases suspension of the penalty might be tried. He would have to determine under what conditions indemnification must be made, and to see to it that justice is done to the injured person. He would have to select those for whom treatment and education offer more prospect of improvement than does punishment.

This is already done with juveniles to-day and, to some extent, with the insane. But with these, the number of persons is by no means exhausted, for whom prison promises as little success as rational treatment promises great; above all, it is the drunkards and partially responsible persons who must be more intelligently provided for.

The criminal judge, who is confronted by the problem of making a psychological report of the offender, finds this a more valuable and stimulating opportunity to show and develop his abilities than the present situation, wherein he is compelled to almost mechanical activity in judging beggars and vagabonds, ruffians and thieves, and wherein little is demanded of his intellect except in the case of fine differences between fraud and embezzlement, and such like, — unless, indeed, even then the Supreme Court ("Reichsgericht") relieves him of the necessity for thought. Moreover, the activity of the judge will not stop with delivering over to the prison officials an offender for whom he believes a serious warning and thorough education to be necessary. He will be partly responsible for such a delinquent's further career.

The training of our judges will, in the future, and this

can be safely prophesied to-day, include temporary service in penal institutions.<sup>1</sup> Even with our present laws it is a crying disgrace that the judge imposes penalties the significance of which he is quite unable to grasp. Of course, a few visits to some prison will not suffice, nor the demonstration and examination of a few particularly grave crimes. It would be almost worse than the present state of affairs if the belief should be aroused that it is possible in this superficial way to penetrate into the methods and effect of the carrying out of the sentence, to penetrate, above all, into the depths of a human soul. No, the future judge will have to do his share of the practical work, will have to study the prisoners in detail, learn to know them well enough to report whether a certain offender is to be conditionally released, whether he is worthy of confidence, whether he has failed to improve.

In addition, the judge will have to supervise the execution of the sentence he has imposed and to aid in deciding what is to be done with the prisoner. This is already done in Baden and Württemberg. In Württemberg the prison boards include high officials in the departments of justice, administration, medicine, both Protestant and Catholic clergymen, and even members of mercantile houses; in Baden the enlarged conference of officials has at its head a director or councillor of the superior court, besides several citizens as members. Through the co-operation of the judge and several laymen, preferably those who are at the same time the representatives of provident societies (compare page 237), the danger which, experience has shown, threatens most administrative boards, the feeling of superiority, would best be avoided. "We prison officials easily develop into autocrats and infallible persons," says Krohne.

<sup>1</sup> von Jagemann, "Bedeutung der Gefängnislehrkunde für die Strafrechtspflege" (MSchrKrimPsych. I, 377).

In 1897 the annual meeting of the International Union of Criminal Law passed the following resolutions, written by Seuffert and Krohne:

1. In order to ensure the rational carrying out of sentences, the supervisory prison boards must appoint suitable persons to take part regularly in the conferences of the head officers in the larger prisons and penal institutions. These persons must include members of the provident organs.

2. Women as well as men must be appointed for the women's prisons.

3. The persons thus appointed shall have the right to visit prisoners without witnesses being present.

4. They shall, especially, be consulted in regard to interruption of sentences, conditional release, and pardon.

In Prussia, it is true, the aid of persons who are not connected with the execution of the sentence is possible only in a slight degree. In spite of the warm advocacy of Krohne, who promises the confidential agents of provident societies that they shall be helped in every possible way, and recognizes their right "to go from cell to cell and speak privately with the prisoners," these persons are not able at present to do much. Their efforts fail because, as Krohne admits, prison officials have a "strong aversion" to this new institution.<sup>1</sup>

This passive resistance must be removed, and this will be the more easily possible, the more important the duty of executing the sentence becomes.

The far-reaching plans for the abolition of fixed sentences must lead to a further elaboration of the resolutions of the International Union of Criminal Law. The co-operation of public prosecutors, of the courts, and of the administrative

<sup>1</sup> von Rohden, "Einige wichtigere Probleme der Entlassenenfürsorge". (MSchrKrimPsych. II, 191).

boards, must be more extensively assured, a co-operation, of course, that is not limited to participation in conferences.

The principal work, it is true, will and must fall to the official entrusted with executing the sentence. He can do justice to his task only if he has a thorough and all-round preliminary education. Wulffen<sup>1</sup> does not consider any man fitted for penal institution service who has not "been through the mill of public prosecutorship and court practice," and even such a one must not be "only a jurist, which is equivalent to a formalist." I consider it questionable whether good institutional directors can be drawn from juristic circles alone. But I fully subscribe to his further words: "Education, psychology, and sympathy, these are the three intensified demands that we must make of penal measures in the future. With military discipline, bureaucratic formalism, and knowledge of a trade alone, nothing is won." Only "really pedagogically talented persons are suited for penal institution service." The very best officials are only just good enough for the realization of the penalty. Let me once more draw attention to Krohne's words: "Even if you have the best law, the best judge, the best sentence, and the prison official is not efficient, you might as well throw the statute into the waste basket and burn the sentence!"

The abolition of fixed terms of punishment, the conditional release, — all hope for greater public security stands and falls with the methods by which the sentence is carried out. Where the prisoner can be effectively prepared for a better future, that is the place to apply the lever.

<sup>1</sup> *Wulffen*, "Reformbestrebungen auf dem Gebiete des Strafvollzugs," Dresden, 1905.

**§ 28. The Treatment of Juveniles and Partially  
Responsible Persons**

Under our present laws the first criminal act brings the unfortunate creature who commits it, if he has completed his twelfth year, before the bar of justice. In judging of the injury done by public trials, we shall do well to distinguish between two groups of criminal children: those who could not withstand a particularly tempting opportunity, inwardly unspoiled; and those who, having grown up in a criminal environment, corrupt from their earliest youth, know only the fear of punishment, of the police, but not the dread of doing wrong. For a child of the first group a trial is a stigma that it will have to bear even if acquitted, the detrimental impression of which will be the greater, the more unspoiled the child is. And not only the child suffers, but his family, which is often very little to blame. At school the child is despised by his mates, watched with suspicion by the teachers; perfectly excusable faults are regarded as signs of criminal tendencies. A sensitive nature may be ruined by the weight of this pressure. In the case of such a child — it need scarcely be said — a trial is the less necessary, because his character can be far better strengthened through educational measures.

It is very different with the other group of children, found particularly in large cities, who grow up uncontrolled and selfish. For them the first court trial means the first step towards independence. In spite of his mental and physical immaturity, the child feels himself to be grown up from then on, for he has been treated as an adult by the court. He has been the hero of an act of which the State has taken notice, and with a feeling of self-importance he waits for the newspaper reports of the trial. This feeling of having played a part in public life is not restricted to the child himself. His comrades regard him with a certain respect, — varying in

degree, it is true. His particular chums admire him. But it would be a mistake in child-psychology to believe that his example only frightens and repels still innocent children. A child's imagination is excited by everything unusual; there is an air of something exceptional about the youthful offender, even to the most unspoiled boy, and his feeling of contempt is tinged with respect for the independence of his "grown-up" comrade.

The damage that the presence of such a child in a school does is beyond estimation. And even if, after a public trial, the child, acquitted, is not sent back to school, but is made the subject of corrective education, his name, his act, and his behavior at the trial, will long remain the theme of conversation among his school-fellows. The effect of this may be that, where the soil is fruitful, it makes the first breach in not yet firmly founded moral views.

The compulsory school age ends at fourteen; until then the child needs school training. After that no one thinks of regarding a boy as mentally and physically mature because he has left school, because his social independence is beginning. Why is not the criminal child left to the discipline of the school, at least up to this age limit? And if this discipline fails, if consideration for the other pupils makes the criminal child's removal from them necessary, why cannot he immediately become the subject of special State education, without first going through a public trial or, worse, a prison sentence?

Punishment is a two-edged sword. As long as it menaces the evil-doer from afar, it may perhaps deter, but as soon as he has become acquainted with it, its effect is dulled; the second punishment is much less feared than the first. This appears only too clearly in the statistics of adult recidivists; how much more must the threat of punishment lose its efficacy if a person has already become acquainted with it in



his youth, if it belongs to the childhood memories of the growing boy or girl.

As far as possible, juveniles serving sentences should be separated from older criminals. This separation is not always feasible. Moreover, association with more experienced companions of the same age often suffices to strangle every vestige of decency, remorse, good resolutions. Thus, I found little girls in whom menstruation had not yet begun who were astonishingly well informed about all kinds of perverted sexual practices. They had been taught by a precocious and early corrupt companion of the same age, in prison. Rigid enforcement of solitary confinement might perhaps have prevented this, but during detention, while awaiting trial, and in the small district jails, there is ample opportunity for the sowing of such seed, however careful may be the method of confinement after conviction.

Von Liszt<sup>1</sup> thus sums up the conclusion we must draw from such a state of affairs: "If a child commits a crime, and we let him alone, the probability that he will commit another crime is not so great as when we punish him." We should not punish him, but neither should we let him alone. The law for special State education empowers us at present, after the execution of the sentence, to prevent the continuance of a criminal mode of life by seeking to make up the deficiencies in the child's former education and training. Now, what part does a few months' imprisonment play in the life of a twelve or thirteen year old offender, in comparison to the special education that is continued up to his twentieth year? In case of acquittal on account of lack of comprehension, the law allows special education to be begun even earlier. Why, then, the comedy of a public trial? Only,

<sup>1</sup> von Liszt, "Die Kriminalität der Jugendlichen" (Strafrechtliche Aufsätze und Vorträge, II, 339).

perhaps, to establish the fact that the child did understand the consequences of its act, after all? This does not seem to me worth while, as long as it is still possible to prove the child's comprehension even after he has been in a school for the feeble-minded! This could certainly be settled in the preliminary examination, in order to put an end to the disgrace of having children play a public part in our courtrooms.

A child does not belong before the criminal judge, nor in prison. The whole question should resolve itself into this: up to what age is special education to be applied, instead of the criminal law? The International Union of Criminal Law<sup>1</sup> has decided in favor of the fourteenth year as the age at which punishment should be admissible, rejecting the original proposals made by Krohne, von Liszt, and Appellius, that the sixteenth year should be adopted, a measure that was also supported by one-third of the prison directors invited to report on this question.

Before the child has left school he cannot, of course, be treated as an adult; he must be treated as a child. Hence the fourteenth year is the very lowest that could be set. At that age the growing individual enters upon the years of adolescence, the years when "inward stability is lacking,"<sup>2</sup> which must not be measured by the adult standard. To bring these peculiar conditions of the age of puberty into harmony with the criminal laws, requires far more time than the judge can devote to the individual case. But if he could, instead of imposing the short sentence that the law prescribes, he would almost always declare long training and education to be necessary. There are also exceptions, cases in which it is so clear that the offense is merely a bit of mischief, that the mildest

<sup>1</sup> Mitteilungen der I. K. V. III, 327.

<sup>2</sup> August Cramer, "Entwicklungsjahre und Gesetzgebung," Göttingen, 1902, W. Fr. Kistner, p. 7.

treatment is appropriate. Official recognition of such a possibility has found expression in "conditional pardon." In general, only juveniles convicted for the first time, whose penalty would not exceed six months' imprisonment, can be so pardoned. Those who are more dangerous are threatened with special State training after their sentences, obviously because, in most cases, the sentence is not considered sufficient. Thus, it only remains to be desired that the treatment of juvenile law-breakers should be legally and uniformly regulated. The programme might be briefly summed up thus: neglected children require compulsory or special State education even when they have not offended against the criminal laws. Criminal prosecution is admissible only after the sixteenth year has been completed; trials are not to be public. Instead of a penalty being imposed, a juvenile may always be required to undergo special State education. Where mild offenses are concerned, the sentence is to be suspended till the completion of the twenty-first year, and then remitted if the offender's behavior has been good. If those conditionally sentenced offend a second time, special State education is to be prescribed. In general, the programme agrees with that of the International Union of Criminal Law, except that I should like to see it in its original form, and not as finally accepted, principally because the treatment there provided for those between fourteen and sixteen is psychologically more correct than that recommended in the final resolutions.

Of particular importance, it seems to me, is the treatment of those persons who stand midway between mental health and mental disease, for whom it is rightly demanded the term "partially responsible"<sup>1</sup> should be used. Our criminal law,

<sup>1</sup> Compare, in this connection, my explanations in *Hochs's* "Handbuch der gerichtlichen Psychiatrie," p. 34; *von List*, "Schutz der Gesellschaft gegen

in contrast to that of former German States and many foreign countries, does not recognize this condition. But gradually the conviction has gained ground that, besides insane persons and normal persons, there are numerous individuals who cannot be judged by the same standards as these others. A law recognizing partial responsibility was rejected by the "Reichstag," on the ground that the term "extenuating circumstances" could be made to cover all the cases to which the measure under discussion would apply.

I will not stop to point out that the term "extenuating circumstances" does not exist where the most serious crimes are concerned, nor dwell on the fact that the judge takes the place of the man who would be most competent to judge of mental conditions that are so difficult to recognize, the physician; it is enough to emphasize here that the effect of "extenuating circumstance" is exactly opposite to that demanded by a rational policy towards criminals. According to our present laws, the partially responsible person receives a *milder*, that is, a *shorter* sentence. This may knock away the last moral support that he has. The consciousness of getting off with a light sentence decreases his fear of punishment, which may have been the only motive that restrained him from criminal acts. But even if he does not regard the mildness of the judgment as a sort of license for his acts, yet the fact remains, that the short sentence is useless. I have often heard such psycho-pathological persons, conscious of their social uselessness, ask for long sentences, in the —

*gemeingefährliche Geistesranke und vermindert Zurechnungsfähige*" (MSchr. KrimPsych. I, 8); *Haftor*, "Die Behandlung der vermindert Zurechnungsfähigen im Vorentwurf zu einem schweizerischen Strafgesetzbuch" (MSchr. KrimPsych. I, 77); *Bleuler*, "Zur Behandlung der Gemeingefährlicher" (MSchrKrimPsych. I, 92); *Hoegel*, "Die Behandlung der Minderwertigen" (MSchrKrimPsych. I, 333); *Kraepelin*, "Zur Frage der gemindert Zurechnungsfähigen" (MSchrKrimPsych. I, 478).

perhaps vain — hope that their feeble energy might be strengthened, and certainly with the true sense that a short sentence would have no enduring effect on them.

How much more advisable is the proposal to make the punishment of such persons, not shorter, but different, in quality. This desired change in the punishment would have to be adapted to the peculiarity of every person, sometimes being therapeutic, sometimes educational, in character, under some circumstances leading to removal from society, and confinement in a suitable institution.

“La responsabilité proportionnelle n’est toutefois acceptable que sous la réserve formelle d’une sorte de pénalité spéciale,” wrote Legrand du Saulle<sup>1</sup> as long ago as 1874. And, really, the main point of the whole question lies here. Legal recognition of partial responsibility is only desirable if accompanied by changes in the punishments imposed. What kind of changes these should be, is clear from the foregoing. Some of these persons belong in institutions for epileptics, some in insane asylums. Most of them belong in what would be an intermediate institution between the workhouse and the insane asylum. In any case, their treatment requires the services of physicians.

In these institutions belong, also, most of the vagrants, among which the physically and mentally normal are in the minority. Of what use are the present short sentences, which sometimes mount up to a hundred and more, or even the temporary sojourns in a workhouse? Of none whatever. Experience teaches us that many inmates of workhouses are industrious and useful laborers, who by their own work cover the cost of their maintenance to the State either partially or entirely. Why should not such people be permanently de-

<sup>1</sup> “Traité de médecine légale et de jurisprudence médicale,” Paris, 1874. A. Delahaye, p. 723.

tained in suitable institutions, instead of being turned out into the road at the end of a short time? Such a measure is not as cruel as it seems. The intervals between imprisonment and detention in a workhouse are generally very short, and many persons do not feel at all unhappy under the systematic régime of the workhouse.

In this way, too, the number of cases of vagrancy, etc., which at present require so much of the judge's attention, would be greatly diminished, and thus more time would be gained for the thorough investigation of graver crimes.

There still remain a few words to be said in regard to drunkards. Some years ago a drunkard was committed to an insane asylum on account of a fit of delirium tremens which passed in a few days. The man was physically sound, but a dissolute drunkard, who, as the records showed, ill-treated his wife and children disgracefully, fought with his neighbors and passers-by, attacked the police, etc. But he was not insane in the legal sense and had to be released. This was the decision of the Ministry, whose special judgment was obtained.

This case is typical of the legal conditions that rule at the present day, and shows what should and must be. In such cases the court must intervene and commit the man to a hospital for inebriates or, if he proves to be incurable, to a permanent institution for alcoholics. To all individuals, from the lunatic to the normal delinquent, the same formula applies: adaptation of social repression to the individuality of the transgressor.

### § 29. Conclusion

The adaptation of social repression to the individuality of the delinquent, leads unavoidably to the indeterminate sentence. The need of a more efficacious defense against the dangerous habitual criminal, must, as was mentioned on page

304, make imprisonment appear to be the best of the possible ways. Again and again voices have been raised advocating the indeterminate sentence as the remedy. In 1880, Kraepelin<sup>1</sup> ~~once more gave due significance~~ to the problem, when, in logically carrying out the theory of correction and entirely rejecting the theory of retribution, which had become untenable, he demanded the abolition of the fixed term of punishment. Except for a few, generally unfavorable, remarks, his demand was at first deliberately passed over in silence. But not for long. The idea was too sound, the soil too fertile, for a reform, the weight of opinion that demanded reform too heavy, the value of the scientific work of the new school too great.

In view of the difficulty with which practical ideas penetrate into chiefly theoretical sciences, and of the century-long stability of the notions in regard to the nature of crime and the manner of combating it, the progress made appears, indeed, astonishingly great. This is, of course, not equally true of all countries. Besides the corrective after-detention of beggars and tramps, and the conditional release, we in Germany have achieved only the conditional pardon, and that only in a limited application. But just in this illustration the triumphant power of the new ideas can best be demonstrated. In 1890 the "Justizministerialblatt für die preussische Gesetzgebung und Rechtspflege"<sup>2</sup> published "The Reports of the Presidents of the Supreme Courts and the Reports of the Public Prosecutors on the so-called conditional sentence." Of the thirteen reports, twelve were against its introduction, and even in the case of its application to juvenile criminals, only a minority was in favor of it. A few years later thousands enjoyed the blessing of conditional pardon,

<sup>1</sup> Kraepelin, "Die Abschaffung des Strafmasses," 1880.

<sup>2</sup> 1890, LII, No. 24.

which we are justified in regarding as a preliminary stage of the conditional sentence.

And in 1904 a public prosecutor, Greffrath, was able, with the general consent of expert opinion, to demand protective detention for an indefinite time, and the meeting of the prison society of Saxony and Anhalt, acting on the proposal of the public prosecutors von Prittwitz and Gaffron, declared the introduction of protective detention to be absolutely necessary.

What with us is still a cherished wish, in other countries has been more or less realized or will be so. The regulations of the draft of the Swiss criminal code signify a break with the past. They provide that, instead of receiving a prison sentence, a dangerous recidivist may be committed to a special institution, his detention there to be for at least ten, and not more than twenty, years, at the discretion of the court, "if the court is convinced that the delinquent, after serving a prison sentence, would relapse into crime, and if it considers his detention necessary" (Arts. 29 and 30). In the case of partially responsible persons, the judge has the right to diminish the penalty, according to his own judgment, but he has also the right to commit the person to an institution (Arts. 16 and 17). Most important of all, however, is Art. 35. The court can commit to a hospital for inebriates the habitual drunkard who has been acquitted on account of irresponsibility, as well as the condemned habitual drunkard. Here we see clearly the demand for practical treatment, even where a penalty is provided as well.

On July 3, 1904, a bill passed its second reading in the English House of Commons, providing lengthy detention and special treatment for any criminal who can be sentenced to penal servitude and who has already been three times convicted of indictable offenses.

Finally, in Norway protective detention is already an



accomplished fact. Section 66 of the general Penal Code of May 22, 1902, provides that, when a criminal is particularly dangerous, he may be detained in prison for a period not exceeding fifteen years.<sup>1</sup>

Even in Norway, however, the principle has not been carried to its final consequence, the abolition of the fixed term, even in the case of the most dangerous criminals. But the break with the methods of treatment that have obtained hitherto is unmistakable. We may confidently await the further development of criminal law. "In science, as in life, the conservative man advocates ideas to-day which a few years ago were advocated only by the boldest of the radicals."<sup>2</sup> If our views are right, their triumph is assured. One point scarcely needs further proof: the adaptation of the social reaction to the individuality of the law-breaker does not lead to a weakening, but rather to a strengthening, of State authority. What could increase our consciousness of the power of the State's organization more than the feeling of being protected from the attacks of those who will not or cannot submit to the legal order? Our respect for the State's authority must grow when we see it pursuing such a purposeful policy

<sup>1</sup> Paragraph 65: "If any person is guilty of several accomplished or attempted crimes for which penalties are provided in sections 148, 149, 152 clause II, 153, I, II, III, 154, 159, 160, 161 (offenses against public safety), sections 174, 178 (counterfeiting money), sections 191, 192, 193, 195-198, 200-204 (sexual crimes), section 217 (seduction of minors), sections 224, 227 (kidnapping), sections 230, 231, 233, 245 II (crimes against the person), section 261 (grand larceny), sections 266-268 (extortion and robbery), section 292 (offenses against property), the court can decide to lay before the jury the question whether, in view of the nature of the crimes, their motives, or the attitude of mind that they indicate in the criminal, he is to be regarded as particularly dangerous to society or to the life, health, or prosperity of individuals. If this question be affirmed, judgment can be given that the convict is to be detained in prison as long as it is considered necessary, the term, however, not to exceed three times the fixed penalty, and in no case to exceed fifteen years more than the fixed term."

<sup>2</sup> *Ferri, loc. cit.* p. 489.

towards the criminal that it does not even stop at the most difficult step, his permanent removal from society, when necessary.

The indeterminate sentence, and particularly the imprisonment for life, of a criminal whose offenses are comparatively harmless, have been decried as senseless cruelty, and the mercy shown to the occasional criminal as pure sentimentality — in both cases entirely without justification. Why should a person be made to feel the weight of a penalty when a warning suffices for him, why punish a man who is ready to make good the injury he has done to an individual or society, why imprison a person who is deeply and truly remorseful?

And, on the other hand, is not the peaceful citizen entitled to protection and security?

The means hitherto employed in combating criminality have proved to be ineffective. Hence, no one can be blind to the necessity for far-reaching reforms except those who cling narrow-mindedly to the antiquated and admittedly inadequate methods that have proved unsuccessful. The facts shown by impartial criminal statistics cannot be denied. The system of criminal law that has been forced and squeezed into sections must also bow to the advance of science. We cannot hope that the new life which we hope to breathe into the rigid and benumbed forms will immediately lead to a sudden and complete reformation, but we may and do expect that its gradual growth will produce better fruit.

Society is responsible to the criminal, because some of the causes of crime are inherent in it; it cannot escape the duty of tracing out these causes, and eradicating them where that is possible. The criminal however is responsible to society, because he lives in it and because his criminal activity injures its primary conditions of life. Hence he must submit to society's opposing him with all the means in its power.

We have reached the point where the apparently firm foundations of criminal law appear to quake, where a new structure is to be erected, the stones of which have not yet been tried, a part of the material of which has still to be found. But this cannot now or ever be done in the study, nor by means of theoretical abstractions. Only dispassionate consideration that views impartially the phenomena which we call crimes, which observes first and then concludes,—in a word, only the natural scientific method,—can smooth the way that leads to a knowledge of crime and of criminals. Not until then will a sure foundation be laid for the proud structure of legal security.

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SM-6.36-32501